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**FAN FREEDOM AND COMMUNITY
PROTECTION ACT OF 1995**

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HEARING

BEFORE THE
SUBCOMMITTEE ON
COMMERCE, TRADE, AND HAZARDOUS MATERIALS
OF THE

COMMITTEE ON COMMERCE
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTH CONGRESS

SECOND SESSION

ON

H.R. 2740

MAY 16, 1996

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FAN FREEDOM AND COMMUNITY PROTECTION ACT OF 1995

THURSDAY, MAY 16, 1996

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
SUBCOMMITTEE ON COMMERCE, TRADE,
AND HAZARDOUS MATERIALS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:16 a.m., in room 2322, Rayburn House Office Building, Hon. Michael G. Oxley (chairman) presiding.

Members present: Representatives Oxley, Fields, Gillmor, Crapo, Bilbray, Whitfield, Ganske, Frisa, White, Bliley (ex officio), Manton, Markey, Gordon, Furse, Stupak, Richardson, Deutsch, Engel, Rush, and Dingell (ex officio).

Also present: Representative Clement.

Staff present: Robert M. Gordon, majority counsel and David G. Tittsworth, minority counsel.

Mr. OXLEY. The subcommittee will come to order. Today we are convening to consider H.R. 2740, the Fan Freedom and Community Protection Act of 1995.

I would like to first commend my colleague and fellow Ohioan, Representative Hoke, for his efforts in crafting this legislation and moving the Congress one step closer to protecting the interests of sports fans in local communities. The tragic loss in Ohio of the Cleveland Browns football team, particularly when you consider the unflagging loyalty and support the Cleveland fans have always given to their team, is a perfect example of why Congress needs to consider further antitrust reforms.

I would also like to commend my friend Congressman Louis Stokes for his efforts to forge a similar solution to addressing the problem of franchise relocation. I note that we are honored to have with us today not only the honorable Members from Tennessee and Texas, but also the gentleman from Illinois, who all have a strong interest in this legislation.

I scheduled today's hearing because professional sports touch the lives of hundreds of millions of Americans. And we are facing an historic watershed on how the future existence of professional sports will evolve. As a society, we face the question of whether we want our sports teams turned into commodities, moving from city to city every few years, or do we recognize some sort of long-term bond between a franchise and the community that has nurtured it over time.

If sports leagues were truly a private enterprise, I would adamantly oppose any further government regulations that were unrelated to worker health and safety. I do not support the mistakes of Congresses-past in thinking that all of our country's problems can be solved through Federal regulation and micromanagement.

However, sports leagues are not governed under the normal rules of open competition. Congress, in the 1961 Sports Broadcasting Act, agreed to grant a limited antitrust exemption for sports leagues. Essentially, Congress has given professional sports the right to create a special closed market, with special rules governing their interaction. Special rights carry with them special responsibilities, and Congress must strive to ensure an appropriate balance between the rights of the teams and the rights of local communities and fans.

And there is indeed an urgency to congressional action. Prior to the Raiders' move in 1983, sports franchise relocations were few and far between. However, following the Ninth Circuit *Raiders* ruling against the National Football League, the floodgates of litigation were opened up. In the last 2 years alone, at least six professional football teams announced their intentions to relocate away from their supporting communities. Under the threat of treble antitrust damages, the NFL has been unable to restrain the movement of its own franchises, and will face a continuing loss or displacement of fan loyalty if reforms are not soon enacted.

I note that the bill before us today was passed out of the Judiciary Committee by an overwhelming 24 to 6 bipartisan margin. Yesterday's *Wall Street Journal* criticized the bill, arguing that it must have been, "drafted by some career staffer who once toiled for the bad old Democrats." Well, I am pleased that Congressman Hoke has been able to lead a bipartisan effort to carry his bill through the Judiciary Committee and on to the Commerce Committee, and I look forward to working with Congressman Hoke, Congressman Stokes, and others involved in the process, to find the critical balance necessary to preserve the integrity of professional sports.

Let me now turn to the ranking member of the subcommittee, the gentleman from New York, Mr. Manton.

Mr. MANTON. I thank the chairman and it's a very auspicious day here, my first day as the ranking member. I don't know whether all of this media attention is here because of that, Mr. Chairman, but let's get on with the hearing.

Thanks for scheduling the hearing today on H.R. 2740, the Fan Freedom and Community Protection Act of 1995.

I would like to express my sincere pleasure to be serving as the ranking minority member of this subcommittee. I look forward to working with you and my fellow subcommittee members for the remainder of the Congress. It is my hope that my tenure as ranking minority member will be marked by strong bipartisan cooperation.

As I said earlier, I appreciate the fact that the subcommittee is holding this hearing today and exercising its proper authority over a bill which clearly falls under its jurisdiction due to the implications for interstate commerce.

I strongly urge my good friends, Chairman Oxley and Chairman Bliley, to ensure that neither the subcommittee nor the full Commerce Committee waive further consideration of this bill if it

should move forward. While I understand the good intentions of this bill in trying to improve a very emotional and financially burdensome problem for cities that have lost or stand to lose a professional sports team, I am not entirely convinced that this is the desirable approach. Indeed, though, I come to this hearing with an open mind and real interest in the witnesses' testimony, I must admit to being a bit skeptical and do have a number of concerns with regard primarily to the forced relocation provisions of H.R. 2740.

First, serious concerns are raised by the unprecedented intrusions into the operations of a private business. H.R. 2740 would be the first-ever piece of legislation to mandate that private businesses must operate in specific locations and on terms dictated by Congress.

Second, the forced expansion obligation would apply regardless of the merits of the approved relocation, regardless of prior community support for the relocated team, and with disregard for the possible disruptive effect of mandatory expansion on the league.

Finally, I am concerned by what appears to be excessive penalties that can be imposed if a league is charged with violation of the forced expansion provisions of the bill as overseen by the Federal Trade Commission.

In the original bill the league would be liable to the community in which the team was previously located for damages equal to three times the purchase price of the team and would risk losing some of its antitrust exemptions. This could obviously lead to fines of many millions of dollars.

Again, I believe that it is very important that this subcommittee hold this hearing today on H.R. 2740 so that all of the affected parties are afforded the opportunity to air their views and concerns. I look forward to hearing the testimony from the witnesses and I yield back the balance of my time, Mr. Chairman.

Mr. OXLEY. I thank the gentleman, and let me welcome the gentleman as our ranking minority member of the subcommittee. We are looking forward to working closely with him on a number of issues for the rest of this congressional session.

Let the record also note that I was victimized by an NFL franchise last night, when the Members of Congress, the so-called Congressional All-Stars, played the Washington Redskins' basketball team led by Darrell Green. Despite the fact that we lost by 20 points, we did raise some money for Darrell Green's charity, his foundation, and had a great time at the same time. And there were no major injuries to be reported on either side, which I am sure is good news for Jack Kent Cooke on the Washington Redskins' side, and certainly good news for this member and others who participated. We were only sorry that the gentleman from Houston, who normally would participate in this game, chose to take a pass when he found out that Joe Patton, the 310-pound offensive lineman for the Redskins, would be participating. And since the gentleman from Houston is nearing retirement, he felt that it was probably in his best long-term interests not to participate, and we were quite disappointed in that.

I now recognize the chairman of the full committee, the gentleman from Virginia, Mr. Bliley.

Mr. BLILEY. Thank you, Mr. Chairman.

Thomas Jefferson warned our Nation in his First Inaugural Address that the sum of good government is, "a wise and frugal government which shall restrain men from injuring one another... [and] leave them otherwise free to regulate their own pursuits of industry and improvement..."

The face-off playing out before us today is the struggle between competing freedoms—the freedom of sports leagues to establish and enforce their own internal procedures, the freedom of the individual franchise owners to sell their labors to the community offering the greatest demand, and the freedom of local sports fans and communities to maintain their long-term involvement in sports leagues without suffering the constant threat of abandonment.

Each of these freedoms is precious to our sense of fairness. Yet, following the warnings of Jefferson, a wise government should be ever resistant to regulating and interfering with the affairs of its citizens.

Whether the NFL and companion sports leagues are described as a coordinated group of individually competing franchises, or interlocking partnerships, the Constitutional grounds for interfering with their right to contract are less than compelling.

A judicious government cannot let every cry of what morally should be turned into an imperative for what legally must be. Time and time again, the administration and Congress have proved that Washington cannot successfully micro-manage the affairs of private industry. We must be careful not to repeat the regulatory mistakes of years past.

This does not mean that Congress should not consider this issue, however. Football, like so many other American pastimes, is tragically falling prey to excessive and unrestrained lawsuits. As long as the sports leagues continue to face the prospect of treble anti-trust damages for a perceived restraint of trade, they will be paralyzed from acting to enforce their own rules.

Like so many other aspects of our legal system, this part of the law is broke and needs fixing. The survival of professional sports is dependent upon establishing a common set of ground rules which by their very nature run afoul of antitrust laws. We cannot allow the demise of professional sports at the hands of a legal system run amok.

It is fully within the purview of Congress to act to place reasonable limits on frivolous and excessive lawsuits. I want to see our sports competition taking place on the field, not in the courthouse. If this requires an adjustment of our antitrust laws to allow professional sports to continue to thrive, then I support such efforts.

In sum, I look forward to hearing the testimony of today's witnesses on the issues raised by Congressman Hoke, and hope that partisan and regional differences do not impede our efforts to develop a consensus solution to preserve the integrity of America's favorite pastime.

Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. OXLEY. I thank the gentleman. The Chair now recognizes the ranking minority member of the full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Chairman, thank you. Thank you for the courtesy and thank you for recognizing me.

Mr. Chairman, I would like to first congratulate my dear friend Mr. Manton as he begins his tenure as the subcommittee's ranking member after years of distinguished service to the committee, to the House and to his district and I think that we are all pleased to see him having this responsible place in our institution.

Second, Mr. Chairman, I commend you for convening this hearing. I believe that this is an important matter which should be discussed because of the concerns that our constituents feel with regard to the regulation of professional sports in all of the different fields of endeavor.

I want to commend our colleagues for representing their constituents. I think that it is important that we should do so, and I believe that they are serving their people well and I certainly hope that as I go forward in my statement they will take kindly to the things I happen to have to say.

I think that if there is further legislative action on this bill or similar legislation, I would urge you, Mr. Chairman, to insist on the regular order and bring the matter for a markup in the subcommittee and in the full committee.

This hearing is going to help us evaluate the merits of the issues before it. I approach them, I want to make it clear, with an open mind. I don't have any conclusions arrived at at this particular time, and I will as a fan of Detroit athletic endeavors in the areas of hockey and football and baseball and basketball express my deep sympathies for those who may be in jeopardy of losing a favorite team.

It is my view, Mr. Chairman, that football fans in Cleveland have been treated shabbily. It is my belief that our good friend and colleague Mr. Sherrod Brown should not be the only Brown left in Cleveland.

Nevertheless, Mr. Chairman, the bill proposed by our good friend Mr. Hoke and endorsed by our dear friend Mr. DeLay raises some very amusing questions and I would like to focus particularly on the basic commandments of the modern Republican religion.

For example, let us address some of the Commandments.

Commandment Number 1—Thou shalt not commit Big Government. This bill appears to give the Federal Government power to decide when, if, and how football, basketball and hockey teams may move and it imposes interesting burdens not only upon the hockey team or the football or the baseball or basketball team that moves, but also on the leagues. It requires expansion. It imposes a wonderful array of lawsuits, which will be mightily enjoyed by the professional lawyers' bar, and I do want to say that when I observed that we were taking action around here on product liability and other things, I thought what a fine idea—we are finally beginning to address some of the problems with regard to litigation of important questions, and lo and behold, I find that I think there must have been some pangs of conscience which struck the authors of this legislation because I note with great interest that all of a sudden a whole new panoply of judicial activity is created within the Federal court which will certainly enrich the trial bar and I'm sure be received with great enthusiasm by the members of that institution.

Commandment Number 2—Thou shalt not clumsily impose a one-size-fits-all approach to Medicare, Medicaid, environmental protection, workers' safety or anything else.

However, under this bill the Federal law will dictate the precise terms and conditions governing when and how a team can leave a community, mandate the expansion of professional sports leagues if a team does leave, and it again sets up a whole wonderful new array of litigation that I'm sure will be greeted with great enthusiasm, as I have mentioned earlier, by the trial lawyers and by the litigation bar.

The legislation raises further questions about why we are proceeding this way when some of the sponsors often oppose regulation by FDA or EPA to protect the public health from bad foods or dangerous water or dangerous air, when they seek to constrict the powers of the SEC to protect investors, and while they spend a great deal of time opposing the efforts of the Federal Trade Commission to protect consumers against false advertising, and shoddy, deceptive marketing practices by slippery, sly and deceitful fly-by-night marketers.

Commandment Number 3—Thou shalt bow down before personal property rights.

Now this is an interesting point. This bill, according to the International Trademark Association, would violate the Constitution's taking clause by forcing the surrender of a privately owned trademark for public use. I am not sure what the total cost of that arrangement will be, but I am satisfied that it will be substantial.

Commandment Number 4—State and local governments are possessed of superior wisdom and efficiency.

Now the Mayor of Cleveland has written this committee that H.R. 2740 is illogical, anticompetitive, and patently anti-business and anti-city.

Commandment Number 5—The free market shall solve all problems. This bill has Congress establishing price control by capping the amount of franchise fees paid to sports leagues and dictating the functioning of these leagues within their own ambiance and own area of activity.

The legislation would also give the Federal Trade Commission, a somewhat despised Agency in some areas up here on the Hill, authority to enforce provisions of this bill, the very same Federal Trade Commission that a number of the sponsors of this bill and most of my Republican colleagues would vote to eliminate when and if the Republican budget is considered by the House today.

I cannot help but observe that if we attempted to regulate any other industry the way H.R. 2740 proposes to regulate sports franchises, the Speaker and the chairman of the Rules Committee, and indeed many other of their Republican colleagues would be literally apoplectic and we might have an increased number of calls on the Capitol physician to address the stress that was induced by that kind of legislative activity, certainly if it were done by the Democrats.

And it would be observed that, were the Democrats to come forward with this, the cries that we would hear from the Republican side of the aisle would be hard to believe both in terms of their vol-

ume and in their intensity, and the infidels would be banished for blasphemy.

With this legislation, we are looking at something which many on the other side of the aisle would call heresy, hypocrisy or perhaps the question of political expedience over principle.

Many members of the committee are focused on Medicare, Medicaid, FDA reform, Superfund, safe drinking water, and other pressing issues of national magnitude. Many up here and many out there in the society believe that these are issues that should be addressed and that we should protect the public health by wise national Federal regulatory action.

Hometown teams occupy a special place in the hearts of sports fans across the country and I am one of them. The Congress has very little experience, however, in dealing with these matters. I trust that when we address this matter legislatively, the subcommittee and the committee will give all of us a full and fair opportunity to change gears from other more important issues if the decision is made to consider sports legislation.

I look forward to an interesting discussion of the legislation and the theology which underlies it. I thank you, Mr. Chairman.

Mr. OXLEY. The gentleman's time has expired. The Chair now turns to the vice chairman of the subcommittee, the gentleman from Texas, Mr. Fields.

Mr. FIELDS. Thank you, Mr. Chairman, I'll try to be very brief.

As vice chairman of this subcommittee, and you, Mr. Chairman, being vice chairman of the subcommittee that I chair, we have some commonality in legislation. You and I were intricately involved in the passage of the Telecommunication Reform Act and that particular piece of legislation was about consumer empowerment, about breaking down monopolies. To me, this legislation is about community interests, is about community empowerment.

Like you, Mr. Chairman, and several of my colleagues, I feel that our communities have been victimized, have been pawns, have not really had any power to affect a situation that reflects on our community at large.

Our communities not only invest money, they invest time. They make infrastructure improvements. In my mind, perhaps the leagues are enjoying protections that they don't deserve or advantages that they should not continue to have and I think there is great interest in finding a common solution and I believe that your approach, Mr. Chairman, as it's always been, has been to be objective oriented.

I am a proud cosponsor of this legislation. I do not want to see the government interfere in private sector activities, but it does appear that there are some sports monopolies that do disregard community interests and I am greatly concerned about that. I think I share that with many of my colleagues, and obviously that is reflected in the fact that we have the Mayor of Houston, Bob Lanier, and his wife Alise, here with us today.

We have got several of my colleagues testifying—Sheila Jackson-Lee, Tom DeLay will be here. Gene Green was here earlier. So it is an important hearing, Mr. Chairman.

I hope that not only will we have this hearing but I would hope that you would follow the suggestion of our good friend from Michigan, and let's take this through the process and let's discuss it and let's be objective-oriented and let's find solutions.

Mr. OXLEY. I thank the gentleman. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Thank you, Mr. Chairman, and I want to thank you for having this hearing and also encourage you as myself and others that encouraged you to have the hearing, I want to encourage you to be sure that we move this hearing to a vote.

Otherwise, I am afraid that we will lose jurisdiction on this matter, and we will turn it over to an earlier vote that occurred in the Judiciary Committee. It's an important matter. I think this committee should come forward with this jurisdiction.

Let me also say to my friend from Houston I listened with interest to his concerns, legitimate concerns about community empowerment.

Let me also say that Nashville would like to be empowered within the free enterprise system to be able to attract a franchise without the Federal Government being heavy-handed in stopping it from having that opportunity, so there is certainly a community empowerment concern there.

Now I really have two interests here.

One is parochial in that this bill at this time specifically addresses Nashville, Tennessee, and what it does is it overrules and puts aside an agreement that was reached between the NFL, the city of Nashville, and the owner of the Oilers. It would make that null and void. It would also amongst all the bells and whistles here, let me point out that it would also really overturn a resounding yes that the citizens of Nashville voted for when answering the question that's asked every fall by Hank Williams Jr., and that is, "Are You Ready To Play Some Football" and Nashville said yes. Nashville should have that opportunity to go forward.

And let me finally say, Mr. Chairman, in a broader scope that—I am going to wait just a moment for all these bells to go off, if my time could be extended. Is that all right? Good.

Was that intentional, Mr. Chairman or—let me finally say that on a broader measure I understand that sports franchises are an emotional issue, but let's put this thing down to something that we could might all understand. That is, if a family were to purchase a McDonald's in a part of a town 20 years ago, they worked hard to make it successful, but because of the changing demographics of that city in that part of town that it became impossible to make a profit and then they went to the franchise operation there at McDonalds and said could we move this to another side of town? And McDonald's says certainly you can, because it is not going to help any of us for you to go out of business where you are now.

So then they find out that the committee says you can only move to another part of town if someone else comes into your location there with the McDonalds. Then there is another family in that town that says they would also like to set up a McDonalds but the only place they can go is to this failed location.

Well, now, nobody wins if you make the owner stay in a failed location. If you make a new franchisee say they have to go a failed location, everybody loses in that situation.

I think that is similar to what we have here with this sports franchise. There shouldn't be a difference.

So finally, let me just without the bells and whistles reiterate that this is really a measure that at this time is earmarked and designated to Nashville, and what it means to Nashville is that it would overrule, Congress would set aside an agreement that was reached between the NFL, the city of Nashville, as well as the owner of the Oilers.

I think that is an outrageous interference from the Federal Government. I hope that we'll continue these hearings and bring this matter to a vote.

Thank you, Mr. Chairman.

Mr. OXLEY. I thank the gentleman. Are there other opening statements from members of the subcommittee?

The gentleman from California.

Mr. BILBRAY. Thank you, Mr. Chairman. I am pleased to be here this morning at this hearing on the Fan Freedom and Community Protection Act.

Mr. Chairman, I am just a Freshman. I haven't been around here too long, but I would like to echo the ranking member of the full committee's statement. I am sure that there is enough hypocrisy on both sides of the aisle to fill the Capitol many times over. I guess if we are going to have a new Commandment, maybe both sides should approach the Commandment of "Thou shalt not allow partisanship to stand in the way of good law."

I would have to say though, Mr. Chairman, as the member who has the San Diego Chargers and the Padres in his district, I have concerns about the expanded role of government in this situation. I am very interested in hearing the testimony of witnesses on both sides of this issue today and I yield back the balance of my time.

Mr. OXLEY. I thank the gentleman.

The gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. I appreciate your having this hearing. I count myself among the tens of thousands of Cleveland Browns fans who were outraged by the news last fall that Art Modell was moving the Browns to Baltimore. The dogs were stolen by a vulture and transmogrified into the ravens all in the name of greed.

Fortunately, Cleveland Mayor Mike White and an army of Browns fans from around the country fought back.

Whether it was the big dog who came to the Hill to testify against the move or Mayor White making Cleveland's case to NFL owners, we made our voices heard loud and clear.

I would like to acknowledge and offer my thanks for their hard work which ultimately led to the deal which has allowed Cleveland to keep the Browns names and colors where they belong, which have guaranteed Cleveland a new team and committed the NFL to making a financial commitment toward the construction of a new stadium in Cleveland.

Considering the fate of other cities which lost professional sports franchises, I think the city of Cleveland in northeast Ohio did pretty well.

Despite that commitment from the NFL the fact remains that too many pro sports owners continue to hold cities hostage due to their unquenchable greed. They threaten to move if they don't get new publicly financed stadiums with luxury skyboxes. They cry poor in spite of sold-out stadiums and they bolt to the city with the biggest take on personal seat licenses.

I think everyone here today would agree that we must put a stop to franchise free agency. The question before us today is how best to accomplish this goal.

I believe the legislation introduced by my colleague from Cleveland, Lou Stokes, would bring stability to professional sports and level the playing field between cities and owners and empower the fans.

I especially thank Chairman Oxley for his leadership and for his convening this hearing today and thank the witnesses for taking part.

I hope that if Congress passes the Hoke Bill that we can move forward from this day and enact plant-closing legislation, comprehensive health care reform, and increase the minimum wage.

I yield back the balance of my time, Mr. Chairman.

Mr. OXLEY. Would tomorrow be soon enough?

Mr. BROWN. Fine.

The gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Mr. Chairman, thank you very much. I also want to commend you for holding this hearing on the Fan Freedom and Community Protection Act.

I would like to reiterate the comments of my friend from Tennessee, Mr. Gordon, and suggest that this committee should have a markup on this legislation to protect our jurisdiction and because it is such an important issue.

I want to also thank Mr. Hoke, who came to my office and took the time and was very courteous in going through this legislation.

After having had the opportunity to review it, I must say, however, that I am not convinced that this is a good piece of legislation. I do think there are some issues that need to be addressed and that is to provide the NFL with the power to prohibit the move of professional teams when necessary without the threat of anti-trust liability. I think that the most onerous part of Mr. Hoke's legislation is the provision on forced expansion rights and with that I do look forward to the hearing on this important issue and welcome the opportunity to listen to all sides. I yield back the balance of my time.

Mr. OXLEY. I thank the gentleman.

Are there other opening statements? The gentleman from Illinois.

Mr. RUSH. Thank you, Mr. Chairman. Mr. Chairman, I am, as many of us on the committee, I am a big sports fan and an ardent supporter of Chicago sports teams. We are well on our way to winning another NBA Championship—

Mr. OXLEY. Would the gentleman suspend just a second.

There is a vote on the floor. Do you want to get your statement in before-hand?

Mr. RUSH. No, I will hold it until we come back, Mr. Chairman.

Mr. OXLEY. Why don't we do that. There is a vote on the previous question, and then a vote on the rule—a 5-minute vote on the rule. So the committee will stand in recess for 15 minutes.

[Brief recess.]

Mr. OXLEY. The subcommittee will reconvene.

The Chair recognizes the gentleman from Washington State, Mr. White.

Mr. WHITE. That's okay, Mr. Chairman. You are welcome to call me Rick, if you'd like. I appreciate that.

I want to congratulate you on holding this hearing and I also want to take the opportunity to introduce a witness who is near and dear to our hearts in the Seattle area. It is Jane Hague, who is the chairwoman of the King County Council who has done such a great job in helping us resolve the recent situation with the Seahawks. We are happy to have her here for you to hear her testimony.

Mr. Chairman, this whole Congress has been a Congress focused on reform, trying to solve some problems that exist in our legal system. I think we would have to say the issue we are addressing here today is one of those problems and to understand the magnitude of this problem you really don't have to look much further than Seattle, Washington, because we have experienced the problem of sports teams leaving in a number of different ways.

Beginning in 1970, when the Seattle Pilots moved to Milwaukee, that was a problem that took us 7 years to solve. Seven years later we finally got the Mariners back. And then we had another problem. It took about 20 years after we finally got the Mariners in town for them to have a winning record, not quite 20 years but almost and that is a big problem, I think, to people in the Seattle area.

We got the Seahawks football team in 1976 in Seattle. It took them until about the mid-1980's under the guidance of Chuck Knox, Dave Craig and our own colleague, Steve Largent, to come up with a winning record and, frankly, they haven't had much of a winning record since then and we think that's a problem.

In 1991, there was another attempt to move the Seattle Mariners out of town. We were able to stop that. And now in 1996 we are again faced with an effort to try to move the Seahawks out of town.

I think when you look at the history of this, you recognize that there are at least two problems presented here. No. 1, it is too easy to move a sports franchise out of a city that has usually devoted a lot of time and effort to keeping them and, No. 2, it has taken too long for Seattle teams to win as many games as we would like them to win.

Now, in the old days, I would have been here in Congress supporting a bill that would solve both of these problems but this is a new day, this is a reform Congress, and I am here to tell you I am not going to support a bill that will require Seattle sports teams to win more games than their opponents. I think that is going too far for the Federal Government.

But I do think the problem of having sports teams leave town too easily is something that we can and should address. How we address that needs to come up with a careful balance between recognizing the rights of private owners and recognizing the rights of communities who have devoted a lot of their resources to supporting these teams. But I think the bill before us today is at least a first step in trying to find that balance.

I think we would all agree that the antitrust laws which work very well in other parts of our commercial society really don't work too well when they are related to professional sports teams. The Seattle Seahawks and the Oakland Raiders or another football team really don't compete against each other in the same way that McDonald's and Burger King or even GM and Ford compete against each other. And so I think it is appropriate for this committee to take a careful look at our antitrust laws and see whether there are some changes that could be made that will let our sports leagues work a little better.

I look forward to hearing the testimony from all the witnesses. I think it is a very interesting hearing and hope we can come up with a bill that will solve this problem.

Thank you, Mr. Chairman. I yield back my time.

Mr. OXLEY. I thank the gentleman. The gentleman yields back.

The gentleman from Pittsburgh, Pennsylvania, Mr. Klink.

Mr. KLINK. I thank my friend from Ohio. I have no formal statement but I will just say that this is a piece of legislation that is near and dear to the hearts of the fans of the Pittsburgh Steelers as well. If there is anything that we like more than loving our Steelers, it was hating the Cleveland Browns and likewise. They loved to hate the Pittsburgh Steelers. So we understand the pain that our friends in Cleveland have come to feel and the pain that our friends in Houston are about to feel because we love to hate the Houston Oilers also and, you know, this is a problem that goes back to when the Oakland Raiders originally moved to Los Angeles and, of course, there was the problem back then with treble damages that I think that the amount of money that we were dealing with back then compared with what treble damages would be now are not even comparable unless you would compare a pop gun with a hydrogen bomb.

That said, I have some very serious reservations and an open mind about this legislation. Do we, as a tradeoff for protections of these franchises, force as a Federal Government a professional league to expand, in essence, to take on a new business partner as the price of these reforms. And I am even more interested in some of my friends that have said time and time again, let's get government out of everybody's business that now they want to insert government back in everyone's business.

I similarly don't understand and would be anxious to find out during the course of this hearing that if Rudi Giuliani was to talk the New York City government into building a couple stadiums and bringing the Jets and the Giants back to New York, do we owe two more franchises to northern New Jersey, in essence having four sports—professional football teams in the same media market.

Similarly, if the Washington Redskins were to build a new stadium in Washington, DC, do we owe Maryland another franchise under this piece of legislation? I'm not sure about that.

In southwestern Pennsylvania, while we love our Steelers, and during the time that we have won four Superbowl championships and been quite successful, we had many years before that with the Rooney family where the team was not successful and it was a testimony to the late Art Rooney and his sons, and Dan Rooney will be, I understand, testifying in one of the panels later on this afternoon that they have maintained a presence through hard times and good times in the city of Pittsburgh. And I look forward to that testimony.

At the time that that happened, we also lost a lot of steel mills and we lost a lot of glass plants and other types of manufacturing. In fact, 155,000 people in southwestern Pennsylvania lost their jobs because someone chose to move their franchise in manufacturing from the city of Pittsburgh or a county near Pittsburgh to somewhere else or to close it down.

Would we similarly tell those businesses that we're going to treat you like sports franchises? If we have somebody back in Pittsburgh, even if it's the workers, and they are willing to invest, do we guarantee them that they will have a portion of that marketplace? My understanding with this bill is that you are guaranteeing a portion of that marketplace to this new entity. They will be part of the schedule, part of the league, part of the revenue that comes from television and radio and all of the other things.

You are actually guaranteeing them a revenue stream. Do we do that in other industries? So I am here with an open mind but I have, I think, more questions than I have answers and I look forward to hearing the testimony from the panel of witnesses today.

With that, Mr. Chairman, I yield back the remainder of my time.

Mr. OXLEY. The gentleman yields back.

Are there further opening statements from the members? The gentleman from Long Island?

Mr. FRISA. Thank you, Mr. Chairman. I appreciate the opportunity that this hearing will bring for us to hear testimony on this issue which is actually very important to sports fans.

As a kid growing up on Long Island, I got very attached to the New York Nets and they left town and went to Jersey. And a big Giants fan and they went across the river to New Jersey. I think they still have the unmitigated gall of officially referring to themselves legally as the New York Giants. I can't stand it, but neither can the rest of us New Yorkers, even though we still are Giants fans. And the Jets now play in New Jersey.

I think it is time that we look at this legislation carefully and I would like to see us enact it so that we can protect the localities that support these franchises, that we can protect the fans that provide the revenue to these franchises and so that we can ensure that while these sports are big business, we should remind ourselves and this country that the sports teams are still a game that Americans love to enjoy.

I appreciate and yield back the balance of my time.

Mr. OXLEY. The gentleman yields back.

The gentleman from Ohio, Mr. Gillmor.

Mr. GILLMOR. Thank you, Mr. Chairman.

I first want to commend you for holding this hearing on legislation that is of tremendous interest to millions of fans and I want to commend Congressman Martin Hoke for his leadership and his very hard work in trying to find the legislative solution.

It is clear there is something broke in the world of professional athletics and that is particularly true as it relates to those cities which have what we might call sports franchises on wheels and to the people who support those teams.

It is appropriate that Congress look at this situation because it is the special privileges granted by Congress that has enabled professional sports franchises to become the extremely profitable and valuable properties that they are, but with those special privileges there certainly ought to go special responsibilities and it has become evident in recent years that many in professional sports only think about the privileges part of the special treatment they have received and have forgotten the responsibility part.

Cities where franchises are profitable, where fans have demonstrated loyalty in good years and bad, where host communities have made substantial investments for the benefit of these private professional franchises have been abandoned just to get a better financial deal somewhere else.

Professional sports existed and were popular before the antitrust exemptions were written into law and they would still be popular if these antitrust exemptions were removed. Granted, it might change the financial nature of a game and that would impact owners but it would certainly not mean that the American people would be deprived of the opportunity of seeing these sports.

In a time when corporate welfare is one of the buzzwords we are used to hearing around here, it is worth pointing out that professional athletics get special treatment under the law that other private businesses in America could only envy. The result of those special privileges have been to turn some of these franchises into properties worth hundreds of millions of dollars. It has made millionaire owners even richer. And the result of that special treatment under law has been a vast pool of money to be spread around to those who were on the inside of the franchises, whether they are owners or players.

The average salary in the National Basketball Association for a player is \$1.9 million a year. That is not for a star; that is just for your average, run-of-the-mill player. In major league baseball, it is over \$1.1 million a year for the average player.

I am not opposed to anybody making a lot of money and I think that salaries ought to be set competitively in the marketplace and not by the government but it is worth pointing out that these salaries are so high not just because of the marketplace but because of artificial protection granted by law to this industry which has enabled them to acquire this vast pool of money. I would also like to point out that these average annual salaries exceed what the average working American makes in their entire lifetime. But we should also probably be sympathetic to those who are playing in the NFL because the average professional football player is forced to get by on only \$714,000 a year.

One unfortunate aspect of the sports franchise on wheels practice has been the way that many cities around this country have gotten into a bidding contest using taxpayer money to try to keep or attract franchises. Invariably, this involves using hundreds of millions of dollars of taxpayer money to subsidize the relocation of a private business and I might say in defense of the owners and while they are trying to hold up these cities for as much money as possible, they are at least acting rationally. If somebody is willing to throw hundreds of millions of dollars at you, you are rational to take it.

The people whose rationality we need to look at are the State and local government officials who are willing to throw hundreds of millions of dollars into stadiums and special concessions to these businesses. Almost invariably these are the same cities that come to Congress and tell us they have great financial needs and they are always seeking financial help from the Federal Government. One has to wonder how much better off these communities would be if they invested \$200 million in attracting factories or other businesses which would create thousands of permanent jobs, instead of using \$200 million to subsidize a professional team.

The arguments that these taxpayer-subsidized sports franchises pay their own way are simply not supported by the facts. Indeed, if they did pay their own way, they could be financed by revenue bonds paid out of the proceeds of the facilities. No city would consider revenue bonds and no sports team would consider doing it for the simple reason they know full well the substantial taxpayer investment could never be repaid out of any activity economically generated by the sports franchise.

While it may be a little beyond the scope of this hearing, I think there are two things we ought to be looking at in this area. First is the special antitrust exemption. Even if we didn't have the exemptions, we would still have professional sports. The owners and players might make a little less money but you'd have a popular sport to which the average working citizen could afford to take his family.

Second, it seems to me that we ought to consider in our Federal aid programs how much need these cities really have for Federal money. If they can afford to use hundreds of millions of dollars in this way, we might be better off putting our scarce taxpayer resources into other cities which make wise use of their money.

Thank you, Mr. Chairman.

Mr. OXLEY. The gentleman's time has expired.

The Chair would ask unanimous consent that we proceed out of order to take testimony from the Majority Whip who is already behind in schedule, and then I will come back to the other members for the rest of the opening statements. I appreciate the position of the committee on that regard.

With that, let me introduce the honorable Tom DeLay, the Majority Whip, from Houston.

**STATEMENT OF HON. TOM DeLAY, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TEXAS**

Mr. DELAY. Thank you, Mr. Chairman, and I appreciate the committee's indulgence. Usually, I don't like special privileges but, in

this case, my schedule is rather tight this morning, particularly when we have a budget on the floor that we desperately need to pass so I appreciate—

Mr. OXLEY. The gentleman is not allowed to whip in the committee without unanimous consent.

Mr. DELAY. I understand, Mr. Chairman.

I, too, want to commend my colleague, Martin Hoke, for standing up for fairness and for the fans. The work that Martin Hoke has done on this bill is outstanding and I just am very impressed with how he has handled himself through this whole process.

Through the years, I have heard from the owners of sports teams and from professional athletes this common refrain, this isn't a game, it's a business. Well, I'm not a misty-eyed sentimental fool. I think anyone that has followed my career knows that I believe in the free market, I am a free market nut, that I believe in deregulation and that I believe in business. But, as a former small business owner, I know what really is business and what's a game and what these athletes play are games.

I don't mean to diminish the role of athletics in our society. In fact, professional sports has a profound impact on my constituents' lives, a wider impact than many businesses. For that reason, it has special responsibilities and those responsibilities go to the heart of this legislation.

When Art Modell decided to leave Cleveland for Baltimore, he was stealing a part of the identity of the fans. He may have thought he was making a clever business decision. Actually, he was betraying the good will of millions of Cleveland Brown fans. He was taking away their hopes and their dreams and their aspirations for their team and for their city.

It may seem curious to many nonsports fans but a city's identity is often tied up in its sports teams. What would Boston be without the Celtics or Chicago without the Bears or New York without the Yankees? They would be cities with part of their identity missing.

Mr. Hoke's legislation aims to ease the pain of a city losing part of its identity. Of course, some people might question whether the Federal Government should even get involved in these kinds of issues and we have already heard statements to that effect and that is a fair question. In fact, it is a fair question I have asked myself.

In response, let me say that the decision was made years ago when the professional leagues came to Congress and asked us to provide an exemption to the antitrust laws for television and radio broadcast issues and, after that, the merger of the American Football League and the National Football League. The minute they did that, they took it out of the free market and brought the Congress into the process. You cannot ask for exemptions to Federal laws on the one hand while demanding that Congress not interfere with those exemptions that shelter these franchises from responsibility on the other.

Now, if the National Football League wants an end to all of these antitrust exemptions in return for the end of congressional interference, that is philosophically defensible and I will introduce the bill and carry it for them. But I fear that the NFL wants its cake and eat it too and, to me, that is unacceptable.

Mr. Chairman, what this legislation seeks to address is the very real complaints of the fans that spend their time, their money and their emotions rooting on teams that can leave in the middle of the night without any fear. And, in my mind, I haven't forgiven the Oilers ever since they fired Bum Phillips, but that doesn't mean that I want Houston to go without a professional football team. Houston's fans deserve a professional football team.

So I, once again, want to commend my colleague, Martin Hoke, for standing up for the fans of Cleveland and indirectly standing up for the fans of Houston and urge you to favorably report this important legislation.

Thank you, Mr. Chairman.

[The prepared statement of Hon. Tom DeLay follows:]

PREPARED STATEMENT OF HON. TOM DELAY, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

Mr. Chairman: Thank you for taking the time to hold this hearing today on the Fan Freedom and Community Protection Act.

I want to commend my colleague, Martin Hoke, for standing up for fairness and for the fans.

Through the years, I have heard from owners of sports teams and from professional athletes this common refrain: This isn't a game. It's a business.

Well, I am not a misty-eyed sentimental fool. I think that any one who has followed my career knows that I believe in the free market, that I believe in deregulation, that I believe in business.

But as a former small business owner, I know what really is business and what is a game. And what these athletes play are games.

I don't mean to diminish the role of athletics in our society. In fact, professional sports has a profound impact on my constituents lives, a wider impact than many businesses.

For that reason, it has special responsibilities. And those responsibilities go to the heart of this legislation.

When Art Modell decided to leave Cleveland for Baltimore, he was stealing a part of the identity of the fans. He may have thought he was making a clever business decision. Actually, he was betraying the good will of millions of Cleveland Browns fans. He was taking away their hopes, their dreams, their aspirations for their team and for their city.

It may seem curious to many non-sports fans, but a city's identity is often tied up in its sports teams. What would Boston be without the Celtics, or Chicago without the Bears, or New York without the Yankees?

They would be cities with part of their identity missing.

Mr. Hoke's legislation aims to ease the pain of a city losing part of its identity.

Of course, some people might question whether the federal government should get involved in these issues in the first place, and that is a fair question. In fact, it's a question I have asked myself.

In response, let me say that decision was made years ago when the professional leagues came to the Congress and asked us to provide an exemption to the anti-trust laws for television and radio broadcast issues, and after that for the merger of the American Football League and the National Football League.

You cannot ask for exemptions to federal laws on the one hand, while demanding that Congress not interfere when those exemptions shelter these franchises from responsibility on the other.

Now, if the National Football League wants an end to all of the anti-trust exemptions in return for an end of Congressional interference, that is philosophically defensible.

But I fear that the N.F.L. wants its cake, and eat it too. And to me that is unacceptable.

Mr. Chairman, what this legislation seeks to address is the very real complaints of the fans that spend their time, their money and their emotions rooting on teams that can leave in the middle of the night without any fear.

In my mind, I haven't forgiven the Oilers ever since they fired Bum Phillips. But that doesn't mean that I want Houston to go without a professional football team.

Houston's fans deserve a professional football team. Once again, I commend my colleague, Martin Hoke, for standing up for the fans of Cleveland, and urge you to favorably report this important legislation.

Mr. OXLEY. I thank the gentleman for his statement and would say that until draft day, I had absolutely no interest in the Houston Oilers. And when they made the Heisman Trophy winner from Ohio State, Eddie George, their No. 1 pick, all of a sudden some of the arguments that you and others have made from Houston make a lot more sense.

The gentleman from the Upper Peninsula of Michigan.

Mr. STUPAK. Thank you, Mr. Chairman, and thank you for holding this hearing today on professional sports.

As a fan, and I am a big sports fan, I understand the frustration and anger of fans across this country who spend their whole lives rooting for a team only to see them move in the middle of the night. However, I have to question the appropriate response to this problem which is creating a Federal entitlement to a franchise for cities who have lost a sports team.

With all due respect, the new majority this year has attacked the validity of senior citizens to affordable quality health care. Many Republican members have questioned whether or not disadvantaged children should be entitled to health care or a school nutrition program. Yet many of these same members, including the majority leader who called himself a free market nut now want to create a Federal entitlement to a sports franchise.

The sponsor of this legislation, the gentleman from Ohio, on numerous occasions has attacked government involvement. On November 1, 1995, in the discussion we had on health insurance, the gentleman stated, "the villain here is where the villain usually is when our country has problems it's the Federal Government." And on May 2nd, the gentleman from Ohio stated, "I cannot tell you how much positive feedback I've gotten from the men and women of northeastern Ohio, the west side of Cleveland and western Cuyahoga County regarding the efforts we have made and the efforts to make government smaller, to make it more responsible, to reduce taxes, to reduce the burden of government on people and to try and bring that burden of government to its closest and most local area. That is the local communities."

Well, I hope the gentleman from Ohio will make a strong case for why now the Federal Government, why the U.S. Congress should involve itself in running the NFL, the NBA or the NHL when he doesn't believe that the Federal Government is capable of running anything correctly. So I would be very interested in knowing why senior citizens are not entitled to quality health care but we need to create an entitlement for cities and municipalities.

I should note the Mayor of Cleveland, Senator Mike DeWine, the former Governor and Senator Glenn among others, have rejected the concept of forced expansion and instead favor the proposal by another gentleman from Ohio, Mr. Stokes.

Mr. Chairman, I want to work with you and the other members of the committee to protect fans and the integrity of professional sports. I do not believe that owners should move teams on a whim, however I do not believe that Congress should pass legislation like the bill before us today that unjustly meddles in the development

of professional sports. We have so many other very important issues before this Congress, clean air, Superfund, safe drinking water. But, yet, we are going to try to make an entitlement for sports franchise. I hope we don't go down this road. Let's take a look at the alternative legislation by Mr. Stokes.

I look forward to hearing the testimony of Mr. Hoke and others today. Thank you.

Mr. OXLEY. The gentleman's time has expired.

Are there other opening statements?

I'm sorry, Bobby, I'm sorry. We started with the gentleman from Illinois and then broke for a vote, and we will hopefully end with the gentleman from Illinois.

The gentleman is recognized.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. Chairman, I am a big sports fan and am proud to support all of Chicago's teams. But I want my local officials to be able to deal fairly with the sports teams in Chicago. I want the teams to prosper and, most of all, I want the fans to be able to enjoy and support the teams and their overall community.

I must confess that it is a little difficult for me to spend a lot of time trying to work on Federal legislation to dictate how much sports teams should pay to sports leagues or under what circumstances a team can move to another city. Mr. Chairman, it is difficult simply because of the problems that we are confronted with in my district like Medicare and Medicaid, environmental protection, worker safety, the minimum wage and other issues, issues that really hit home for me and my constituents.

So I think we should keep all of this in relative importance. We should keep all of this in perspective.

Good people in my district are into Michael Mania, they are into Rodman Mania, they are into Bulls Mania, and Bears Mania. But they are also more into Medicare Mania and Minimum Wage Mania, Environmental Protection Mania and many, many other real manias that affect the quality of their life on a day-to-day basis.

Mr. Chairman, I welcome the reaction from our witnesses on why this legislation is really needed, whether it goes too far, whether there is an alternative approach that better balances the interests of fans, communities, teams, owners and other interested parties. Mr. Chairman, with all due respect, I have to characterize this piece of legislation that we are getting ready to discuss today as Hoke's Hoax. I do that simply because of the fact that there seems to be a certain amount of insincerity of the importance about the other programs that we are confronted with and the other types of issues that we are confronted with in this committee.

Mr. Chairman, I have been continuously told by the Republican leadership that the government should be out of the affirmative action business. Well, it seems to me as though what we are doing, and what we are saying is that the government should be out of the affirmative action business as it relates to women and minorities but when it comes to sports teams, then we should have a different kind of classification for affirmative action and that is affirmative action for athletes and athletic teams and athletic team owners.

Mr. Chairman, again, I want to say that I appreciate this hearing simply because it will allow us to really get to the bottom of Hoke's Hoax and, hopefully, we can get some meaningful input and some meaningful output in terms of this hearing and be able to move on to the real issues that concern the American people. Thank you.

I yield back the balance of my time.

Mr. OXLEY. The gentleman yields back.

The Chair would simply admonish the members to be concerned about personal references to other members. I don't think it has any place in this committee, and it is unfortunate that that would be the case.

This is a very serious issue. This is a bill that passed out of the Judiciary Committee on a large bipartisan vote, and I think that we should address ourselves to the issues and not to the personalities.

Are there other members seeking opening statement.

Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. I am new to the committee and new to the subcommittee and let me just say that I am looking forward to listening to the testimony on this bill and other related bills. I don't know if this is the bill that ultimately we ought to pass but I do know that many of us are concerned with franchises moving or threatening to move and I think our constituents are concerned as well.

While the bill does not pertain to baseball, having Yankee Stadium right across the street from my district, we are obviously very concerned about the possibility of the Yankees moving across the river to New Jersey or anyplace else. While I do think that teams and owners of teams are trying to do what they can do to get the best possible deal, I am concerned about the musical chairs that some franchises play—of course, in New York, we have experienced this in the 1950's with the Dodgers and the Giants leaving and we experienced the Giants and the Jets moving across the river to New Jersey.

I don't know if this bill is the right vehicle. I don't know if other bills are the right vehicle but I do think that Congress needs to review and reflect very, very carefully. There is nothing wrong with legitimate questions about franchises jumping around.

Certainly if an area doesn't support a franchise or if there are certain problems with the stadium, then those problems should be ameliorated. But I don't think that regions can afford to have guns pointed at their heads. I don't think that Congress can afford to just sit back and not at least review a situation and that is why I welcome these hearings on this bill and other bills because I do think that it is very important for Congress to be engaged. I think our constituents are clamoring for engagement and I think they deserve no less. So I look forward to listening to the hearings and the testimony and look forward to actively participating. I thank you, Mr. Chairman.

Mr. OXLEY. I thank the gentleman, and welcome to the subcommittee Mr. Engel.

Mr. ENGEL. Thank you.

Mr. OXLEY. We are glad to have you with us.

The gentlelady from Oregon, Ms. Furse.

Ms. FURSE. Thank you, Mr. Chairman.

I certainly take seriously your view about not calling names but I do want to remind you that Mr. Hoke had a piece which I thought brought disrespect to the reputation and good name of Cabinet members, the Vice President and the First Lady.

Mr. Chairman, members of the committee, the public has become increasingly concerned with the ongoing relocation of professional sports teams. In Oregon, the Trailblazers are very important in our community both in cultural and economic terms. Sport teams have become part of the community, when the fans are familiar with a team and can develop a relationship. And the constant relocation does threaten these bonds as well as the economic activity that surrounds them.

Now, I would say that the Blazers, I would make very clear, are not Portland. Portland is a viable, dynamic city without the Blazers. But they are certainly part of our city's excitement and the bill before this subcommittee today tries to address the problem of constant relocation surrounding professional sports teams.

It does seem rather simple to me that if fans support their team, they should be able to keep that team. But if fans don't support their team, the owners shouldn't be forced to keep it in a place where it isn't economically viable.

Portland and Oregon enthusiastically support the Blazers and I look forward to these hearings today on their behalf. I would say, Mr. Chairman, that I wish that we had spent more time in the full committee in hearings on Medicaid, especially the issue when we took the protection of Medicaid from children and pregnant women. Those are issues which I believe this committee should spend time on. But I do look forward to hearing the testimony on this bill before us.

Thank you.

Mr. OXLEY. The gentlelady's time has expired.

The gentleman from Florida.

Mr. DEUTSCH. Thank you, Mr. Chairman.

I would make a point. I have the good fortune of living in what I think is the best community in the United States, South Florida. We are a community which has had the good fortune of, in the last several years, gaining three professional franchises. Originally, when I was first in South Florida full time, we only had a professional football franchise. Now we are one of the few areas, one of the locations in the country, that have all four major sports teams.

You know, some of the legislation in front of us probably would have prevented that from happening and I will tell you that is something that obviously is a great concern to me as well as to a lot of other growth areas in the United States of America, including communities in Florida. So, you know, it is always kind of nice when Republicans call for more government regulation over the private sector. But sometimes, as I like to point out, government regulation is not the best approach. So I look forward to these hearings but really come to them with a great deal of skepticism at this point.

Mr. OXLEY. Does the gentleman yield back?

Mr. DEUTSCH. I yield back.

Mr. OXLEY. Are there further opening statements?

Noting none, the Chair now turns to the panel of members. I am sure that all of you have been through this drill before and on your committee we had members testifying and had to sit through opening statements so we are finished with that and recognize now the first member, the author of the legislation, the gentleman from Ohio, Mr. Hoke.

STATEMENTS OF HON. MARTIN R. HOKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO; HON. ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TENNESSEE; HON. SHEILA JACKSON-LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS; AND HON. MICHAEL PATRICK FLANAGAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. HOKE. Thank you very much, Mr. Chairman. Thank you for holding this hearing and for your interest, for your support and for bringing this important matter before the Commerce Committee.

Mr. Chairman, I think it is obvious from the opening statements, at least it is obvious to me from the opening statements, that there is a great deal of receptivity to learning more about the bill. I think it is also obvious that it is not a partisan issue, although some have chosen to make it a partisan issue for purely partisan reasons.

Generally speaking, this is a matter that is somewhat complex, it deals with a very difficult area of the law and with profoundly emotional, as well as economic consequences that have come about as a result of the legislation that we passed here a number of years ago.

What I am going to do is ask unanimous consent to place my prepared statement in the record. Rather than read it, what I would like to do with my time is answer some of the concerns that were raised.

Mr. OXLEY. Without objection, all of the members' statements will be made a part of the record.

Mr. HOKE. Before I begin, I want to answer some of the concerns that were brought up just this morning. I would like to say I wish the gentleman from Michigan were here but he must have read an earlier draft of the bill because I think he would be very delighted to know that there is no judicial review in H.R. 2740, there is nothing that involves the FTC in H.R. 2740 and there is no trademark law section with respect to H.R. 2740 as reported out by the Judiciary Committee and, hopefully, that will make it a lot easier for him to support this bill. I was pleased to hear him say also that he was receptive to learning more about what it is trying to accomplish.

Second, there is absolutely nothing, Mr. Gordon, in the bill that goes to Nashville. Nashville is not named, Houston is not named. There is nothing in here that goes to any contracts that are entered into between Mr. Adams and Nashville or anybody else.

Third, there is nothing in the bill that prevents the movement of any team and there is also nothing that forces anyone to keep a team in any particular place. It doesn't force or prevent the movement of a team from Houston to Nashville or Cleveland to Baltimore and it also, by the same token, doesn't say that a team has to stay in a particular city.

Finally, since a lot of partisanship has been raised in this, unfortunately, and I do think it is unfortunate, I want to point out that the reason that there was primary jurisdiction with the Judiciary Committee and secondary jurisdiction with the Commerce Committee is that the bill deals with antitrust law. The mother of all antitrust law is the Sherman Antitrust Act of 1890 and I would point out that since we are bringing up partisan issues that there was a Republican Congress at the time as well as a Republican Senate. The President who signed it into law was Benjamin Harrison, who was also a Republican and, finally, and you will be interested in this, Mr. Oxley, John Sherman was an Ohioan, who was also a Republican senator from Ohio.

So this notion somehow that there is a partisan issue with respect to protecting consumers in this country really ought to be laid to rest.

Mr. OXLEY. If I could interject, not only was Sherman from Ohio, from Mansfield in the Fourth District, but the President was also an Ohioan.

Mr. HOKE. Benjamin Harrison, of course.

Mr. OXLEY. And a graduate of Miami University, my alma mater. So you struck a responsive chord. You may continue.

Mr. BROWN. Mr. Chairman, if I could, for a moment, as a native of Mansfield, I wanted to add my piece that it is good to see that we have to go back eight decades to find a pro-consumer Republican. I'm glad to see that.

Mr. HOKE. I would also point out, since we are bragging about home town heroes here, that Mr. Sherman, while he was born in Mansfield, had the good sense to move to Cleveland and practice law there.

The first claim that is being made by those who have mounted a pretty strong disinformation and attack on this bill, is that professional sports are private enterprise and Congress has no business to meddle in it. If that were true, that would be a mighty compelling argument. But the fact is that pro sports leagues are about as far from free enterprise as you can get in America.

In 1961 and 1966, the leagues came to Congress and asked for what amounted to a private bill. They wanted special legislation just for them to shield and exempt them from Federal antitrust laws. They said that the exemptions would give them financial stability and thereby allow them to protect fans and communities, which they passionately promised to do. In fact, Commissioner Pete Roselle testified to Congress that preserving existing franchises was "of considerable public interest to local economies, to stadium authorities and to consumers. Without the plan, franchise moves and/or franchise failures will occur as a matter of course within the next few years."

Congress took the leagues at their word and gave about 100 very wealthy individuals the most spectacular piece of corporate welfare ever enacted, the Sports Broadcasting Act of 1961, followed closely on its heels by the Football Merger Act of 1966. They certainly achieved financial stability, which is not really all that hard when the Federal Government hands you an unregulated monopoly.

The NFL's TV contract made possible by the Sports Broadcasting Act was worth \$1.1 billion in 1995. Now, that's corporate welfare.



In other words, Congress is already up to its neck in Federal legislation with pro sports.

So they got their financial stability, but what about their end of the bargain protecting fans and communities? Not hardly. What we have gotten is what you ultimately get from all monopolies, ever-escalating and more outrageous demands, arrogant behavior, monopoly pricing, lousy service and a poor quality product.

One might be inclined to just shrug and say, "no big deal" if it weren't for the unintended consequences and who has to pay for them—local taxpayers in urban cores where there are very tight budgets in a zero-sum game. So if \$350 million, including the debt service, goes to a new stadium, that is \$350 million that is not going into schools, streets or sidewalks, public safety, social safety nets or other meritorious projects.

In Cincinnati, that means immediate cuts, real cuts. Not Washington cuts, real cuts for the Cincinnati Zoo, the Riverfront Music Center and the Cincinnati Museum of Art. In Cleveland, school officials just laid off 451 teachers, 10 percent of the faculty, because of the dire financial straits of the Cleveland School System.

And who does win? Super-rich owners who can pay very rich players to be watched by well-off spectators in magnificent play palaces, paid for with the taxes of working men and women who can't afford to buy tickets to the game. All because Congress gave the leagues a private bill exempting them from antitrust laws and neglected to place any conditions in the bill that would make the leagues' promise of community protection enforceable.

Well, that is exactly what my bill does. It levels the playing field ever so slightly by giving communities a modicum of negotiating leverage, the opportunity under very tough conditions to get a replacement team. It's simple, it's fair and it will be effective.

Claim No. 2: the leagues will put an end to franchise free agency immediately if Congress gives them an additional antitrust exemption. I am not going to go into a long discussion about where the case law is today on this issue of franchise movement restriction. The Ninth Circuit Federal Court of Appeals has made it clear that leagues can restrict team movements today. The proper cases to read are Raiders I and II and the Clippers case.

The findings of those cases have been confirmed by the actions of the National Football League preventing Georgia Frontiere from moving the Los Angeles Rams to St. Louis until the pot for the owners was sweetened by an additional \$24 million, as well as the NFL's recent decision to prevent Seattle from moving to Los Angeles.

What my bill does is codify the case law allowing the leagues' to restrict team movements and making that ability absolutely crystal clear.

But that is not the problem. The problem is that franchise free agency makes the owners lots and lots of money. When Art Modell moved his team to Baltimore, its value increased by \$40 million, ditto the Rams to St. Louis. So the promise that was made in the 1960's of maintaining existing franchises was in direct opposition to the economic interests of team owners.

The owners know this. They also know that this time it might be Art Modell and Bud Adams's turns, but next time it could be

their's. The owners' form of free agency is making rich those who take advantage of it and it simply goes against human nature to expect team owners to suddenly begin to act irrationally and oppose team moves.

An individual owner is not going to oppose any move by another owner because he may need that owner's vote himself some day. In short, maybe we can change the antitrust laws but we can't change the laws of economics and we certainly can't change human nature.

Claim No. 3: this bill mandates forced expansion. This is the NFL's mantra and it is completely untrue. H.R. 2740 gives cities an opportunity for an expansion team provided that a tough but fundamental market test is met. A new investor, willing to put up big bucks and risk them—\$200- to \$300 million in the case of the NFL—comes forward. It is that simple.

No government regulators, no bureaucracy, no Federal employees. Just a simple market test to make sure that the old owner is leaving because the city won't support his team and while this mechanism simply does not mandate forced expansion, it will help stabilize the leagues by reducing team movements as promised 35 years ago by Mr. Peter Roselle. Why? Because the other team owners will be motivated by a competing self-interest, the self-interest of not seeing their share of league revenues diluted as a result of increasing the total number of teams.

The league will be motivated to step in and help mediate a solution when a franchise first encounters problems, not after a crisis has developed, when the owner threatens to leave and the league is faced with the potential of having to fill a void in the abandoned city.

Claim No. 4, and this is my last: this bill is an unfunded mandate. Of all the misinterpretations, this is the most outrageous. Those who claim this have the right description but they apply it to the wrong bill.

The Federal antitrust exemptions granted to the leagues have become an unfunded mandate on host cities that cost billions and billions of dollars. Of the 113 professional sports franchises, 39 are now demanding new stadiums and arenas. This is on top of the 31 built since 1989. As long as team owners can negotiate from a "take-it-or-leave-it," "build-a-new-stadium-or-I'm-out-of-here" position, the price of this unfunded mandate will continue to skyrocket.

Now, let's be clear about what we are talking about. This unfunded mandate involves the taking of very scarce tax dollars from hardworking families to further enrich very wealthy team owners. H.R. 2740 ends that madness, it ends unfunded mandates and it stops the legal extortion of cities and taxpayers.

In closing, some people may wonder why I am still involved in all of this. After all, Cleveland will have its team by 1999. So why do I care?

Because, pro sports is becoming one more thing that is wrong with America. Powerful special interests obtain special legislation for special benefits from Congress on the promise that they will use that legislation to protect communities, consumers, citizens and taxpayers, but just the opposite happens. It is used to exploit cities and taxpayers into bidding wars against each other in a massive and subtle wealth transfer scheme that transfers tax dollars from

millions of hardworking families to a handful of very wealthy team owners and, in the bargain, disrupts and distorts a community's priorities by placing it in an untenable, no-win situation.

The fact is that Congress created this mess, Congress is responsible for the impossible bargaining position cities find themselves in and Congress is obligated to fix it. So let's do what we can to make the professional sports once again something that is right about America and let's pass this.

Finally, I want to say particular thanks to a couple of people that have been very helpful in this. I have never had an opportunity to do this. I will be very brief. But on my staff, Stacey Schrader and Bret Coulson, who can't be with us today because he was stricken with an illness just yesterday morning. And I also want to particularly thank Chairman Henry Hyde as well as Congresswoman Sheila Jackson-Lee and Congressman Mike Flanagan who showed tremendous leadership at the Judiciary Committee. And, finally, I think that the Mayor of Houston has shown tremendous courage in this—in being willing to stand up to the professional leagues in this area and I want to commend him as well.

Thank you very much, Mr. Chairman.

[The prepared statement of Hon. Martin R. Hoke follows:]

PREPARED STATEMENT OF HON. MARTIN R. HOKE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

The story of this legislation makes no sense whatsoever if it isn't placed in the context of the legislation that Congress has already passed with respect to professional sports leagues, most notably the Sports Broadcasting Act of 1961.

In 1961 the leagues, spearheaded by the NFL, came to the Congress and asked for a special, unique privilege—a specific exemption from federal monopoly and anti-trust laws. They said that this special exemption would give them the financial stability that would allow them to protect fans and communities.

Let me emphasize this point because I believe it is important. Congress didn't dream this legislation up in 1961. The leagues came to the Congress and lobbied for it—very, very aggressively. And they made certain promises—both express and implied—about how they would act if the exemption was granted to them.

Pete Rozell, the NFL Commissioner at the time, testified, "Without the [legislation], franchise moves... will occur as a matter of course within the next few years"... "With this [legislation] every franchise will remain in its present location."

Interestingly, a member of Congress at the time, Rep. George Meader of Michigan, had extraordinary prescience when he observed to Mr. Rozelle, "You are now asking for an exemption from the anti-trust laws from Congress... asking us to place a rather large amount of power in your football league—which you say you will use judiciously. If there [is] concern that the power granted by such exemption would be abused, I think the Congress would have the right to make it conditional. I am trying to find some phraseology so that we would not have to depend upon the good will of the management of the professional football league."

Mr. Rozelle replied, "It would be extremely difficult to do, but as it is our intent to protect" he would support that effort.

Today—35 years later—we are codifying the promises made then. That's why the bill is called the Fan Freedom and Community Protection Act. It gives cities a bargaining chip with which they can protect themselves and make the pro leagues keep the promises they made. And it does so with what was described in testimony before this committee by nationally recognized professional sports economist, Professor Andrew Zimbalist, as an "ingenious mechanism for the protection of host cities. It allows owners to preserve their property right to move their asset where they desire, but it allows a vacated city [the opportunity] to obtain an expansion franchise."

Some have said that this is a tough piece of legislation... too tough. If what is meant by calling it tough is that it's effective legislation, then yes—this legislation will, in fact, be effective—very effective in protecting communities that have made very substantial investments in their teams, both tangible and intangible.

That it will be effective in finally giving those communities some modest bargaining leverage should be perfectly obvious to every member of this committee—each

one of whom has had a full-court press thrown on them the last few days by the NFL, by its lobbyists, the Commissioner and the owners.

The correct question isn't whether or not this is effective legislation, but if it is fair legislation?

Is it fair to communities? Clearly it is: mayors and county commissioners from all over the country have endorsed it. It is the very first time they've ever had the possibility of any real negotiating leverage.

Is it fair to the leagues?

If you believe that they owe an obligation of responsible and judicious behavior in exchange for the anti-trust exemptions granted to them by Congress (by the way, worth \$1.2 billion to the NFL in 1995);

—If you understand that Congress created the framework that caused communities this nightmare in the first place;

—If you understand that the solution this bill offers is market-based (there is no forced expansion, *none, zero* . . . there is an *opportunity* for expansion, but only if a community will genuinely support a team—as evidenced by the most reliable market test: the existence of an investor willing to risk several hundred million dollars to capitalize a team); and

—If you're dead set against the people's House giving pro team owners something for nothing, and think it's time to bring some balance back to the equation, then it is crystal clear that this legislation is fair to *all* concerned. The bill is also very balanced because it gives the leagues exactly what they have asked for from the Congress—clarification and codification of their own ability to restrict team movements. This bill makes that right perfectly clear and memorializes it in black letter law.

But remember—even with this provision clarifying the antitrust laws, the leagues are *not required* to prevent team relocation, they're merely *able* to. There is nothing in the bill that requires leagues to prevent relocation; instead, the bill gives communities a modicum of negotiating leverage by providing them an opportunity to obtain an expansion franchise if the market supports it.

Why do we need to give communities that opportunity? The facts speak for themselves. Currently there are 16 NFL teams, 14 NHL teams, and 15 NBA teams that have been in play since January of 1995 for relocation to new stadiums in either their current city or a new city.

Why? Because the name of the game today is luxury loges, club seats, personal seat licenses and advertising, parking, and other concessions. In other words, a brand new stadium with a contract that is completely one-sided, because cities currently have zero bargaining leverage. And the result goes directly to the bottom line value of the team.

By moving from Cleveland to Baltimore, the value of Art Modell's franchise increased from \$160 million to over \$200 million according to Financial World magazine.

Who ends up paying for all this? Local taxpayers, to the tune of over \$1 billion in stadium construction in the past three years. And it is all made possible by special antitrust exemptions conferred by—you guessed it—the U.S. Congress.

I became involved in this fight and learned about the background and history of congressional involvement in pro sports because of what happened to the Browns. But it is because Cleveland now has a team guaranteed to it that my voice and views can be truly independent, and for those who might have been concerned that mine is a purely parochial perspective, more trustworthy.

The bottom line is that this legislation gives an insurance policy to every single city that makes big taxpayer investments in pro sports. It's insurance for Charlotte, for Cleveland, for Houston, *and* for Nashville. . . not insurance that they will always have a team, but insurance that they will always be dealt with fairly.

I would like to point out one other unique feature of this bill, the provision that contemplates and allows for broad, widely held ownership patterned after the Green Bay model. That provision ensures the "fan freedom" to which the title of this legislation refers, conferring upon fans in every community across America the same freedom enjoyed by the people of Green Bay, who because of its ownership arrangement, can go to sleep at night free from the fear and anxiety that their team will be gone the next morning.

By themselves, the anti-trust exemptions granted by the Congress of the United States, which have become the financial foundation of professional sports leagues, more than adequately justify Congress to act.

What *compels* Congress to act, however, is the improper use of those congressionally conferred privileges. Rather than being used in a way that would bring stability and protection to fans and communities, as the leagues promised, the anti-trust ex-

emptions have been misused to bring about exactly the opposite effect as that intended.

The anti-trust exemptions have placed extraordinary economic power and negotiating leverage in the hands of the members of sports monopolies and have made fans and communities defenseless against the exploitative demands of team owners for more financial assistance, more tax-paid subsidies, more tax abatements.

In a zero-sum competition for finite public resources that pits sports projects against urgent needs such as education, crime prevention, and infrastructure maintenance and improvement, it has been impossible for city officials to bargain in a fair way. Inevitably, the inequitable negotiating position of communities has at times led to distorted public priorities, fueled misallocations of resources, and sown seeds of polarization and rancor.

In Cleveland a few weeks ago, educators reacted incredulously to the decision by city school officials to lay off 451 teachers—a tenth of the faculty—due to budget deficiencies. Describing the cuts as “morally outrageous” in light of the city’s recent commitment to a football stadium that could cost up to \$250 million, the president of the local teachers union asked, “How can this be justified?”

Just this week, the City Manager of Cincinnati announced that the funding for its sports stadiums made it necessary to eliminate or significantly reduce construction projects at Riverbend Music Center, the Cincinnati Zoo, and the Cincinnati Art Museum.

Conflicts such as these are being played out across the country, many taking place in the shadow of glittering new sports palaces where games are played that ordinary families cannot afford to attend.

That is what has inspired this legislation. That is what must compel this Congress to act now and restore balance, restore stability, set our priorities straight, and yes, to restore sports to the place where once again they can be one of the many examples of what is right with America and not an example of what is wrong with America.

Now we have the unique opportunity to level the playing field and do right by the sports fans and communities. We’ve been down this road before, but always come up short. Let’s not blow it this time. Let’s seize this opportunity and win one for fans and communities nationwide.

Mr. OXLEY. I thank the gentleman.

Our next witness is our friend from Tennessee, Congressman Bryant.

STATEMENT OF HON. ED BRYANT

Mr. BRYANT. Thank you for the opportunity to testify today. As a side note, of course you are well aware of the impending and hopeful move of the Oilers to Nashville, Tennessee, and I assume they will bring Mr. George with them and we are certainly at a location much more convenient to Ohio for you so I hope we can have that transfer of loyalty, not only with that but in today’s hearing.

In line with that, I too would like to recognize a mayor, if I may take a point of personal privilege, a mayor of a very outstanding area that is not in my district but it is adjacent to my district, Mayor Phil Bredesen is here today from Nashville, Tennessee.

I also, finally, want to commend my colleague from Ohio, Martin Hoke. He’s got a bill here that I disagree with in parts and I think it is substantially flawed but I do commend him for his effort in this area and, too, want to join in and say that this is not a partisan bill. We showed that in the Judiciary Committee. We came to the wrong conclusion, unfortunately, but it was a bipartisan vote and I would hope that we could maintain that atmosphere, particularly in this committee as it is discussed more completely.

But if we are, as a Congress, to pursue a public policy that addresses the concerns that have been brought here today, I strongly believe that we must place the interest in the rights of the fans, the communities, the local governments, the local businesses, as

well as the team owners in the respective league, whether it be the NFL, the Hockey League or the NBA, place them all on a fair, reasonable and level playing field. Any legislation that fails to treat all the concerned parties on such an even-handed, level basis must be scrapped and I believe this legislation dangerously approaches that.

Mr. Chairman, I have grave, grave concerns with the provisions of this bill which would require the NFL, the NBA and the NHL to grant expansion teams to cities losing a team to relocation. I disagree with my colleague from Ohio, this is an unfunded mandate. I can't think of any better example of where you require a private sector business to replace a team and that city has up to 3 years to locate an interested buyer and then you have to place a team within that city within 1 year of that. That is an unfunded mandate. That is mandated expansion.

It is that way regardless of the market conditions or whether the league would even have the capacity for another expansion team at that point, whether the talent level would justify that at that point and regardless of the rights of the team owners. What's worse, this bill would set into law the purchase price of a new team, an amount that may well have absolutely no relevance whatsoever to the fair market value of that team.

I don't know about you, Mr. Chairman, but the last time I checked, we in Congress weren't sent here to dictate what Jack Kent Cooke or any other business owner, for that matter, what his or her business is worth. But it doesn't stop there.

Even if a league determined that abiding this Federal mandate would prohibit their potential for future expansion into new markets, thus finding it in their best business interests not to provide an expansion team and not to do so, this bill would subject them to steep punitive penalties three times the valuation of that team, as well as other unfair and unproductive or counterproductive measures. In effect, the mandated expansion and the penalty provisions of this bill would unquestionably freeze each and every team in the current market, even if the fans weren't supporting the team, even if the team were losing money, even if the team's contract with the stadium expired, even if the stadium is actually falling apart, and even if the relocation were actually reasonable and justifiable. Under this bill, a team will stay right where it is, like it or not.

Mr. Chairman, I am here to tell you that's not fair, that's unreasonable, that's an unlevel playing field, it's punitive, it's not free market capitalism, it's un-American. How can we even consider enacting a piece of legislation that would impose such an unprecedented level of Federal authority and intrusion upon a significant number of private sector businesses within our economy, not to mention numerous cities? Without question, many of us are adamantly opposed to the Federal Government imposing unfunded mandates upon both private sector businesses and communities across America. Yet, in effect, that is exactly what mandated expansion would amount to, an unfunded mandate.

Several years ago, General Motors chose to move its Saturn Corporation operation down to my district in Spring Hill, Tennessee. If the Federal Government would have told GM that, if you move

to Tennessee, we're going to require you to build a plant to mitigate the loss in Michigan or else, GM would have laughed. But, for all intents and purposes, this is exactly what we are talking about today.

As I have already stated, I do support some of this bill's other provisions and with reasonable modification in the mandated expansion and penalty provisions, I would certainly be inclined to support it. Mr. Chairman, I must add for the record that the United States Conference of Mayors, whose membership consists of numerous mayors from cities having professional sports teams, has taken it on themselves to consider their position on exactly this type of legislation. In doing so, they formed a special task force, the Sports Franchise Location Task Force.

In the words of one of the co-chairmen of this task force, the purpose of the task force was to study the various legal and economic factors which foster the dislocation of professional sports teams. At the last winter meeting of the USCM, the entire task force, save one mayor, rejected a policy proposal that contained mandatory expansion such as what we are talking about in this bill today.

Mr. Chairman, if your committee is to give further consideration to this proposed legislation after today, let me urge you and the entire committee to give serious consideration to the amendment which I offered in the Judiciary Committee. This amendment is quite simply to strike the mandatory expansion and penalty provisions and replace them with a judicial review provision. Let's not chart a course into the uncharted waters of shouldering the private sector with what we want them to do and not what they can do with their businesses. To put it into the vernacular of football, the mandatory expansion is a trick play designed in a time-out huddle. This is an untested bill. It is unprecedented and it won't work.

If we are to move forward with this legislation, what would work is my proposal. My idea is to allow a court to decide whether or not a league's decision to relocate one of its teams is justifiable, based upon the criteria which would be laid out within the bill. This only makes sense and, in fact, is very similar to the Stokes bill that was also considered by the Judiciary Committee.

I am of the belief that the judgment of an independent court, and I underline the word "independent" court, would be more than an adequate means by which to protect both the rights of the league and the interests of the community which may lose a team. The net result of my proposal would create a fair, reasonable and level playing field that all parties involved certainly deserve. Both parties would ultimately be enjoined by the decision of the court and both would receive independent, uninhibited consideration of the case.

With my amendment, H.R. 2740 would be a much more mainstream bill. It would be sound and certainly worthy of this body's effort to enact it into law.

The mandatory expansion and penalty provisions of H.R. 2740 go beyond the duties of legislating. The very nature of this bill is such that it makes a one-sided implicit judgment that every decision by a league to relocate one of its teams is bad and must be thus mitigated by mandatorily offering an expansion team. This cookie cutter approach just isn't sound policy. And, besides, has anyone

stopped to consider the very real possibility that this type of legislation can set a horrible, terrible precedent?

A recent editorial appearing in the Tennessean newspaper had this to say about H.R. 2740: "The notion of the government dictating to a private business where it has to start a new business is ludicrous and probably unconstitutional."

Another editorial appearing in Clarksville, Tennessee's Leaf Chronicle, another newspaper in my district, stated the following when they learned about this bill: "We thought that the Republicans who are now in control on Capitol Hill had run on a platform of getting government off our backs—fewer laws and less regulation. Now some of them are considering interfering with businesses that have decided to move from one city to another?"

Mr. Chairman, I would request that along with my statement, the full text of these editorials be put into the record.

Mr. OXLEY. Without objection. If the gentleman could finish up.

Mr. BRYANT. Mr. Chairman, we need to protect the communities and fans. We don't need to do so with the heavy hand of government intrusion into the free market.

As I wind down, I would like to make a couple of additional comments if I could in response to some of the things that have been said today, particularly as they concern the so-called monopoly effect that the NFL and NHL and NBA supposedly have and this tremendous antitrust exemption that we have given them through Congress.

As those who know about these exemptions are aware, the limited exemption that these leagues have basically allowed a merger on one occasion, allowed the AFL and NFL to come together in football, and allowed the teams to share revenue which is a concept which affects and helps small cities across this country. It is doubtful whether a team like Buffalo or Cincinnati or Green Bay could survive without this shared revenue among the leagues and it is certainly not tremendous antitrust exemptions such as baseball has, and baseball is not even in this bill for whatever reason.

I would say this to Mr. DeLay, who is not here right now, but he talked about how a team can be a part of a town and I hear this so often in this debate, that you are ripping out a tradition in this town and you ought not do it. The reason we can tell you that you can't do it anymore is because you have this exemption under law.

Well, let's assume we took away that exemption. Let's say we took away that exemption. Is that going to prevent those teams from moving elsewhere? No, it's not. In all likelihood, if those teams aren't making money they will be much quicker in leaving and you will see them leaving from in particular the smaller markets because you don't have that exemption which allows the shared income.

So, again, this idea that the team belongs to the city is in no way related to this idea of exemptions, whatever we give to them in Congress. The two are apples and oranges.

I would say also to my colleague from Florida, he mentioned a moment ago about being in a growth area and very happy to be there and had some concerns about the chilling effect it would have

for other such growth areas in achieving a professional sports franchise. I agree totally.

I have done research and, had Mr. Hoke's bill been in place at the time, I think the Tampa Bay Buccaneers would have been at least 18 years later in coming to Tampa Bay because of that need to replace teams throughout the process.

What about teams like Washington, DC, who may move up north to Maryland? Will the league have to come back in and put a team back in Washington in place of the Redskins? Or the two New York teams that play in New Jersey, if they move back to New York, do you have to put two new teams in New Jersey? You've got four teams.

Or Cincinnati, if they move their stadium across the river, do you have to place a team in Cincinnati, which is already a small market? Can it support two teams?

This bill needs to be defeated and I ask this committee, in full consideration, to take a vote on it and not allow this bill to become law or pass out of this committee as it now stands.

Thank you.

[The prepared statement and attachments of Hon. Ed Bryant follow:]

PREPARED STATEMENT OF HON. ED BRYANT, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TENNESSEE

Thank you, Mr. Chairman, for allowing me this opportunity.

I am not here today to criticize many of the well-intentioned goals of The Fan Freedom and Community Protection Act. If the objective of this bill is to stabilize well-supported pro sports franchises, I support that.

In fact, certain portions of this bill would actually alleviate a number of problems sometimes faced by communities that may lose a professional sports team to relocation.

But before I go any further, let me state early on: professional sports teams are private businesses, just like General Electric or the Main St. General Store. They are private, for-profit businesses, their owners have a bottom line, and they are subject to the forces of our free market system of capitalism. This fact must not be lost.

Likewise, there is no question that some franchise relocations may not be justifiable on their merits, and ought to be stopped. That's exactly why we're here today.

Mr. Chairman, I happen to represent populations centered around two major metropolitan areas of Tennessee, Memphis and Nashville. Neither has major league sports teams, but that's not to say they won't someday. So I think I'm enough of a visionary to understand and appreciate the need for many of this bill's provisions.

Yes, I agree that communities ought not be subjected to incidents such as the 1984 sudden disappearance of the Baltimore Colts.

Yes, I agree that local leaders and other interested parties ought to have the opportunity to make their concerns known to team owners and leagues in a public forum about the possibility of their losing a team to relocation.

This bill would go to great lengths to prevent the former and permit the latter, and appropriately so.

With so many cities and private businesses obligating substantial portions of their financial resources to expenditures like new stadiums; stadium renovations; infrastructure improvements; tax incentives and abatements; bond sales; new hotels; new restaurants and the like, ensuring that a team owner gives adequate notice of its intentions to relocate his team is not at all unreasonable.

Communities deserve to be informed of that kind of information in a timely fashion, and they deserve the right to be heard.

But, Mr. Chairman, if we are to pursue a public policy that addresses the concerns that have brought us here today, I strongly believe it must place the interests and rights of the fans, the communities, their local governments, their local businesses—as well as the team owners and their respective league—on a fair, reasonable, and level playing field.

Any legislation which fails to treat all concerned parties on an even-handed, level basis ought to be scrapped.

Since we're talking sports legislation here, we're looking at 3rd and ten from our own thirty, there are only ten seconds on the shot clock, there are thirty seconds left in the power play.

In other words, Mr. Chairman, although the moment at hand may appear to be a bit exciting and while some may feel compelled to rush head-long into moving forward with this legislation, like my high school basketball coach used to say, "let's make darned sure that the next play we run, we run it right."

But, Mr. Chairman, I have grave, grave problems with the provisions of this bill which would require the National Football League, the National Basketball Association, and the National Hockey League to grant expansion teams to cities losing a team to relocation.

And it would do so regardless of market conditions; regardless of whether or not the league would even have the capacity for another expansion team; and regardless of the rights of team owners!

What's worse, this bill would set into law the purchase price of a new team, an amount that may well have absolutely no relevance whatsoever to the fair market value of the ball club. I don't know about you, Mr. Chairman, but the last time I checked, we in Congress certainly weren't sent here to dictate to Jack Kent Cook—or any, other business owner for that matter—what his or her businesses are worth.

But it doesn't stop there. Even if a league determined that abiding this federal mandate would prohibit their potential for future expansion into new markets, thus finding it in their best business interest not to provide an expansion team and not do so, this bill would subject them to steep punitive penalties and other unfair and counterproductive measures.

In effect, the mandated expansion and penalty provisions of this bill would unquestionably freeze each and every team in their current market—even if the fans aren't supporting the team; even if the team is losing money; even if the team's contract with the stadium expires; even if the stadium is actually falling apart; even if the relocation were actually reasonable and justifiable.

Under 2740, a team will stay right where it is, like it or not.

Mr. Chairman, I am here to tell you that that's unfair. That's unreasonable. That's unlevel. That's punitive. That's not free-market capitalism. That's un-American.

I must ask, how can we even consider enacting a piece of legislation that would impose such an unprecedented level of federal authority and intrusion upon a significant number of private sector businesses within our economy, not to mention numerous cities?

Without question, many of us are adamantly opposed to the federal government imposing unfunded mandates upon both private sector businesses and communities across America. Yet in effect, that's exactly what mandated expansion will amount to—an unfunded mandate.

Mr. Chairman, several years ago, General Motors chose to move its Saturn Corporation operation down to my District, in Spring Hill, TN. If the federal government would have told GM that "if you move to Tennessee, we're going to require you to build a plant to mitigate the loss in Michigan or else," GM would have laughed. But for all intents and purposes, this is exactly what we're talking about today.

Now, as I've already stated, I do support many of this bill's other provisions. And with a reasonable modification to the mandated expansion and penalty provisions, I would certainly be inclined to support it.

Mr. Chairman, I would add for the record that the United States Conference of Mayors, whose membership consists of numerous mayors from cities having professional sports teams, has taken it upon themselves to consider their position on exactly this type of legislation.

In doing so, they formed a special task force, the Sports Franchise Location Task Force. In the words of one of the co-chairmen of the task force, the purpose of the task force was to "study, the various legal and economic factors which foster the dislocation of professional sports teams."

At the last winter meeting of the USCM, the entire task force save one Mayor rejected a policy proposal that contained mandatory expansion.

Mr. Chairman, if your Committee is to give further consideration to this proposed legislation after today, let me urge you and the entire Committee to give serious consideration to an amendment I offered to it in the Judiciary Committee.

And that is very simply this: strike the mandatory expansion and penalty provisions, and replace them with a Judicial Review provision.

Let's not chart a course into the uncharted waters of shouldering the private sector with what we want them to do and not do with their businesses.

To put it into the vernacular, mandatory expansion is a trick play designed in a time-out huddle. It's untested. It's unprecedented. It won't work.

But, if we are to move forward with this legislation, what would work is my proposal. My idea is to allow a court to decide whether or not a league's decision to relocate one of its team's is justifiable based upon the criteria which would be laid out within the bill. This only makes sense.

I am of the belief that the judgment of an independent court would be more than an adequate means by which to protect both the rights of the league and the interests of the community which may lose a team.

The net result of my proposal would create that fair, reasonable, and level playing field that all parties involved certainly deserve. Both parties would ultimately be enjoined by the decision of the court, and both would receive independent, uninhibited consideration of their case.

With my amendment, H.R. 2740 would be a much more mainstream bill. It would be sound, and certainly worthy of this body's efforts to enact it into law.

The mandatory expansion and penalty provisions of H.R. 2740, go beyond our duties of legislating. The very nature of this bill is such that it makes the one-sided, implicit judgment that every decision by a league to relocate one of its teams is bad, and must thus be mitigated by the mandatory offering of an expansion team.

This cookie-cutter approach just isn't sound policy. And besides, has anyone stopped to consider the very real possibility that this type of legislation could set a horrible precedent?

I don't think we want to begin showing the public that if their neighborhood McDonald's means enough to them, we'll pass a law to make sure it stays there and doesn't move across town. But that's exactly what we'd be doing were we to pass this bill in its current form.

A recent editorial appearing in *The Tennessean* newspaper had this to say about H.R. 2740: "*The notion of the government dictating to a private business where it has to start a new business is ludicrous and probably unconstitutional.*"

And another editorial appearing in Clarksville, TN's *Leaf Chronicle* stated the following when they learned about H.R. 2740: "*We thought that the Republicans who are now in control on Capitol Hill had run on a platform of getting government off our backs—fewer laws and less regulation. Now, some of them are considering interfering with businesses that have decided to move from one city to another?*"

Mr. Chairman, I would request that the full text of each of these editorials be entered into the record.

Mr. Chairman, we need to protect communities and fans. But we don't need to do so with the heavy hand of government intrusion into the free market.

Let us protect them by subjecting the reasonableness, the fairness of a league's decision to relocate a team, let us subject that to the judgement of a court.

Then, *all fans* will be properly protected.

Thank you, Mr. Chairman.

LEAF-CHRONICLE OPINIONS

CONGRESS SHOULD STAY OUT OF SPORTS

Measure Would Probably End Oilers Deal for Nashville

To be sure, it's emotionally and financially traumatic for a city to lose a pro football franchise. Cleveland found this out last fall when the Browns' ownership announced it was packing up the team and moving to Baltimore, which is promising a modern stadium that should be more of a money-maker for the team's owner. Houston may see the Oilers go to Nashville for the same reason.

Many of those cities that have lost or are in the process of losing their pro teams are angry. They say that the owners in the NFL and their counterparts in pro basketball and hockey are mercenaries who don't care about tradition and the fans they leave behind. They cite the negative economic impact such moves have—what with lost tax revenue from ticket sales, concessions and parking at the stadiums themselves, not to mention a reduction in sales and tax receipts at stores, restaurants and hotels.

And how have these cities chosen to fight back? They've been lobbying Congress to pass a law that would, in effect, keep most teams right where they are.

Under the "Fan Freedom and Community Protection Act," professional football, basketball and hockey leagues would be required to set up expansion teams in cities that lose their original teams if the cities request such a replacement. If the leagues refuse, they could face a payment of three times the team's value to the losing city. The Federal legislation would be retroactive to 1993.

If passed into law, it would have a chilling effect on moving teams from one city to another because of the expense involved in finding another franchise to replace the one that's leaving.

On Thursday, the Republican-controlled House Judiciary Committee passed the bill 24-6 and sent it on to the House floor. Rep. Ed Bryant, who serves the district that includes Clarksville and is the only Tennessean on the Judiciary Committee, tried to make the bill toothless by stripping the expansion team provision from the bill and removing the retroactivity so that it would not apply to the pending Houston Oilers deal. Unfortunately, he was unsuccessful.

The legislation probably wouldn't quash the Browns transfer because through separate negotiations with the NFL, Cleveland will get an expansion team by 1999 that will retain the Browns name and colors. But the bill probably would doom Nashville's chances to get the Oilers or to bring a pro hockey franchise to its new arena.

Thankfully, some lawmakers—including Bryant—would have asked the obvious question: Why should Congress be meddling in the business of sports?

We thought that the Republicans who are now in control on Capitol Hill had run on a platform of getting government off our backs—fewer laws and less regulation. Now, some of them are considering interfering with businesses that have decided to relocate from one city to another?

If GM chose to move an automobile factory from Detroit to another city in the financial interests of the company, Congress would not pass a law to stop it, regardless of the economic impact on Detroit. It would be a tough break for Detroit, but that's how unencumbered capitalism works. Why should sports teams be held to a different standard?

We're extremely disappointed the House ever took up this bill. Congress should keep its mitts off the marketplace.

THE TENNESSEAN

BILL DROPS THE BALL ON SPORTS FRANCHISES

The same Congress that took seven months to pass a federal budget shows little restraint from jumping into a matter that is none of its concern.

The House Judiciary Committee has approved 24-6 a bill that would force leagues to place expansion teams in cities that lose franchises if those cities can come up with new investors within three years. The bill, called the Fan Freedom and Community Protection Act, applies to professional football, hockey, and basketball leagues. It does not apply to baseball, which enjoys antitrust exemption by the federal government.

The motives behind the bill are obvious. The measure is directed at teams like the Cleveland Browns and Houston Oilers of the NFL that have moved, or are trying to move, to other cities. The bill would be retroactive to Aug. 1, 1995. Its sponsor is Rep. Martin Hoke, R-Ohio, who represents the Cleveland area.

The measure would effectively stunt teams abilities to move. It would affect situations like the one in Tennessee, where the Oilers are attempting a move to Nashville. In such cases, leagues would have to think twice about approving a relocation if they knew they had to expand afterward, by law, to replace a lost franchise.

As commerce policy, this legislation is ridiculous. It would be like forcing a restaurant chain to replace a franchise if one of its restaurants shut down and moved to another town. Tennessee Seventh District Rep. Ed Bryant, a member of the Judiciary Committee, told his colleagues that if they tried this with General Motors when it closed a plant, "If they moved out, and we said, "You can't do that without putting another plant down here," they'd laugh at us."

Bryant is right. The notion of the government dictating to a private business where it has to start a new business is ludicrous and probably unconstitutional.

Of course, such a law would severely hinder efforts of a city like Nashville from obtaining a team. But its effect on Nashville only represents a small portion of the reason to oppose the bill. The measure is an absurd way for Congress to involve itself in the current climate of professional sports.

Bryant has been a voice of reason amidst the clamor and has sought bipartisan support. His effort to strip the expansion language from the bill was narrowly defeated by the committee. Representatives Bob Clement, a Democrat, and Van Hilleary, a Republican, although not members of the Judiciary Committee, have voiced objection to the bill. Those voices should be joined by every other member of the state delegation.

As much as communities become attached to their sports teams, it's important to understand that professional sports franchises are private businesses, and as such,

are part of the free enterprise system, in a free nation, no one should be able to tell a business where it has to operate. And that certainly applies to the federal government.

Mr. OXLEY. I thank the gentleman.

Our next witness is our colleague from Houston, Texas, the Honorable Sheila Jackson-Lee.

STATEMENT OF HON. SHEILA JACKSON-LEE

Ms. JACKSON-LEE. I thank the chairman.

Mr. Chairman, I am very delighted to have the opportunity to present my thoughts to the committee and I thank you for holding this hearing. To former Chairman Dingell, I thank him for his openness and willingness to hear a full discussion on what is a very important matter, and to my colleagues and the ranking members, again, thank you for this opportunity.

If I might, let me say that I hope this committee will report this bill out in a very enthusiastic bipartisan manner, similar to the way the Judiciary Committee did.

Might I associate myself with the remarks of the gentlelady from Oregon, saying that fans and communities that support teams should not be penalized.

If I can refer my colleagues to the language in the opening aspect, the findings of this legislation, it says communities, sports fans and taxpayers make a substantial and valuable financial, psychological and emotional investment in their professional sports teams.

If my remarks can be directed to those aspects of why we are here with H.R. 2740, we are here simply to create a common set of rules. My colleague from Tennessee has indicated already that we have given antitrust exemptions for specific reasons. We now have a reason.

It differs from the hypothesis that was given about a private company relocating to another part of a community, for in fact as we recognize, this particular problem that has come to our attention, there have been sizable public dollars that have been invested by local communities.

I am gratified to be joined here by the Mayor of the city of Houston, Bob Lanier. Along with him and local officials in Houston and Harris County, they have extended themselves in an effort to provide a reasonable opportunity to secure a positive setting and atmosphere for an NFL team, and that team might have included over the years the Houston Oilers, for our community has spent almost or more of \$100 million to ensure a reasonable setting for a team that we love.

This is not legislation to bust a deal. We are not looking now to prevent the Houston Oilers from relocating to Nashville. In fact, as the enthusiastic citizens voted in Tennessee, let me say to them, I hold no grudge. I wish them well, but it is clear that we have a system that does not work, for we in Houston and in Texas have worked very hard to make sure that we have a compatible and comfortable situation for an NFL franchise.

Additionally, city officials throughout the country are forced to engage in bidding wars to secure and maintain a professional

League franchise. Frankly, I think all of us will admit that the marketplace has not worked.

I always believe as my Democratic colleagues have mentioned and if they might hear me out on this, that I, too, agree that we have important issues to discuss, issues dealing with ensuring safety for our citizens, environmental safety and the protection of Medicare and Medicaid.

I also recognize that there are economic choices that have to be made and there is no doubt that NFL franchises and other sports franchises can be the cornerstone of economic development in local communities.

It is recognized that local communities have in fact been the builders and the architects of public facilities that have allowed these NFL franchises to be popular but also prosperous. Now you place them in a position of an uncontrolled bidding war that would simply say that all that you have done in the past has not been respected or appreciated.

This legislation gives some of us an opportunity to play on a field that is even. I hope my colleagues, as we look at this, will look at it in a manner that will bring about a bipartisan solution.

It is important that owners have a right to relocate and it is equally important that H.R. 2740 allows that we have a codified set of guidance. That guidance in fact includes such factors as fan loyalty, community support, the adequacy of current facilities, the nature of public financial support, the financial condition of the team, the degree to which the team owner has engaged in good faith negotiations to keep the team in the city, and existence of a bona fide offer to purchase the team and keep it in the city.

Mr. Chairman, let me add that I'm gratified that the Judiciary Committee accepted a clarification amendment that I offered, that provides the opportunity for public ownership and ensures that communities cannot only speak up about their fans, about their support of their team, but they can pay up by allowing individual shareholders to participate in the purchase of a possible new franchise through the expansion process of this particular legislation.

Let me say that we must emphasize that the expansion aspect of this legislation is one that does not deny the offer being one that the market will bear. We are not suggesting by this legislation nor does it require that the owner take an under the market proposal and therefore lose money in terms of providing an expansion team to the community.

It says that this particular city will have an opportunity within a 3-year period to purchase a team and certainly it would be a team in the manner of a fair offer, a market offer, decent negotiations but no overhang on this particular legislation that would say you must accept the offer.

Might I say that there are qualified investors in the city of Houston now standing and waiting to ensure that we do not lose the opportunity over the next couple of years to secure an NFL franchise.

Houston is a good city with many enthusiastic fans. It has a good local government that over the years has enhanced our Astrodome to ensure that it is a place that is a receiving place for our teams, both baseball and football.

Under the legislation, if the league fails to grant an expansion team to such city, the league would, yes, be subject to monetary damages, but yet, let me say, Mr. Chairman, should a team or an NFL have an opportunity to accept the benefits of what government has done and yet not the burdens.

A professional sports team is a business and no one denies that owners should have the option to move their teams to other cities if financial condition of the business dictates such move. Yet, I know firsthand that across the Nation, there have been cities who have invested quite a bit in ensuring that their teams would stay.

I have already mentioned the amount that Houston has invested and that is over \$100 million.

This legislation in fact is not a penalizing legislation. It is not a deal buster. It is simply giving us the opportunity to have a good safe effort being made into reality, and that is to say that a city that is in the waiting is prepared through its financial offering, through its physical facility, through its fan support, through its overall governmental support, to say yes, we can maintain an NFL franchise.

Might I just, as I come to a close, briefly acknowledge the personal penalty that comes about through the precipitous move of NFL owners, and that is on those who work in our Astrodome and other such sites around the country.

When I go and visit the Astrodome or other such facilities, I go to see a team, but there is another kind of team, team of workers, many of them living in my district, the 18th Congressional District, minorities and women, who are helping to bolster a family's income by working at these particular events.

I've heard their plea and they are crying out for relief and help. Not only do they serve the hot dogs, the popcorn and I guess sometimes the beer, but they also are people who love their team. As they are shouting out for another hot dog, another soda or something else, they are also keeping one eye on the playing field.

I simply ask for a fair shake for these individuals, who are just simply trying to make ends meet. Some of them are individuals who need the earned income tax credit that I hope that we will keep in this Congress, but more importantly, they are out there working to support their families.

We as cities come to you asking that as you deliberate, fairly, I know, that you consider that team that constantly plays day after day to survive in America.

This legislation, H.R. 2740, is not as I said, a punitive legislation. It is simply to create the even playing field that we all would like to see. I think we can work this out and I hope we will do this in an even handed manner.

Let me close by simply also thanking Representative Lou Stokes for his offering and as I said, I think that in working together, working with the cities that are impacted and those that are not and as well, the NFL, which I hope will make their statements in the light that would be received well by all of us, that those of us who represent cities impacted are not out to bust a deal, and hopefully we will not be shackled by any offering of the NFL saying that this legislation would do that, but that we would all come to the table fairly and honestly to work for the greater team, and that

is a team of Americans who work every day and believe in their sports team and just want an even playing field.

I yield back the balance of my time.

[The prepared statement of Hon. Sheila Jackson-Lee follows:]

PREPARED STATEMENT OF SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF TEXAS

Mr. Chairman, and members of the subcommittee, I thank you for convening this hearing today on H.R. 2740, the Fan Freedom and Community Protection Act. As you know, this legislation was referred to both the Commerce and Judiciary Committees. I appreciate the opportunity to testify before you in support of this legislation, which was recently amended and marked up in the House Judiciary Committee by a vote of 24 to 6. I am pleased to represent the hundreds of thousands of sports fans in the Houston metropolitan area who have faithfully supported our local professional sports franchises for the last 35 years.

Relocation decisions by team owners in Los Angeles, Cleveland and Houston and preliminary discussions by team owners in other cities to relocate their teams have resulted in sports fans losing confidence in the National Football League. Additionally, city officials throughout the country are engaging in bidding wars to secure or maintain a professional league franchise.

As you know, the National Football League recently approved the relocation of our city's professional football team, the Houston Oilers, to Nashville, Tennessee and the citizens of Nashville recently approved a referendum supporting the use of tax dollars to facilitate the relocation of the Houston Oilers to Nashville.

As you can imagine, many Houstonians are very disappointed about the loss of the Houston Oilers but are enthusiastic supporters of H.R. 2740, as amended in the Judiciary Committee. Since sports franchise relocation is so contentious and involves issues that are national in scope, I believe that it is necessary for Congress to help clarify the procedures surrounding this emotional issue.

H.R. 2740 grants a limited antitrust exemption to the leagues and requires them to establish relocation criteria that will be used in deciding whether to approve the relocation of a sports franchise. The leagues have been concerned that if they rejected an owner's request to move his team, the owner would most likely prevail in a lawsuit on the basis of antitrust law. By providing this narrow antitrust exemption, the National Football League, for example, would be able to make objective decisions on sports franchise relocation without such fear.

The relocation criteria contained in the bill includes factors such as fan loyalty, community support, the adequacy of current facilities, the mature of public financial support, the financial condition of the team, the degree to which the team owner has engaged in good faith negotiations to keep the team in the city, and the existence of a bona fide offer to purchase the team and keep it in the city.

One provision of the bill that is extremely important to Houston is the provision relating to expansion teams. Without this provision, Houston will not be able to secure another franchise for a long period of time. The provision requires the league to grant an expansion team to a city that loses a team to relocation within three years of such relocation if there is a qualified investor willing to establish an expansion team. I might add that there are qualified investors in Houston who are prepared to negotiate with the league about bringing an expansion team to our city. It is also important to note that the bill provides for public ownership of sports franchises, which would enable such team to have broad community ownership and support.

Under the legislation, if the league fails to grant an expansion team to such city, the league would be subject to monetary damages and the loss of the antitrust exemption that allows them to negotiate television contracts. Furthermore, the Justice Department would be able to sue the league for declaratory and injunctive relief to enforce the expansion provision and the private rights of action by local governments, sports authorities and potential investors.

The issue of sports franchise relocation is a controversial issue and an emotional issue. A professional sports team is a business and no one denies that owners should have the option to move their teams to other cities if the financial condition of the business dictates such move. Nevertheless, I know first-hand that the taxpayers of cities such as Houston have invested millions of dollars in securing and maintaining their professional teams.

Since 1988, taxpayers in Houston and Harris County Texas, have invested \$100 million in remodeling the Houston Astrodome and implementing other improvements to keep the Houston Oilers in Houston. In 1988, the owner of Houston Oilers

signed a ten-year lease to use the Astrodome. Certainly, the presence of our professional teams have strengthened Houston's economy and helped our city to attract businesses and residents. Our sports teams have helped to create jobs, foster the development of new businesses and helped create a sense of pride within the community.

An important provision of the bill, which is critical to cities that may be losing a team, provides that team owners must reimburse the state or local government in the event the owner breaches the contract for a playing facility by relocating to another playing facility, including a facility in the same community.

The bill also requires owners to give an advance notice of 180 days to local governments of their intent to relocate their teams. This provision would enable local governments to make an offer to keep the team in their cities. The league must also hold at least two public hearings before making its decision on relocation of a team and requires the league to issue written findings. This provision is very helpful to cities who are fighting to maintain a sports franchise.

Finally, this bill has an effective date of August 1, 1995, which would allow as many cities as possible to take advantage of the various provisions of the bill.

I look forward to working with my colleagues on the Commerce Committee and in the House to move this bill through the legislative process so that local governments and sports league owners can negotiate their differences on a more level playing field.

Mr. CRAPO [presiding]. I thank the gentlelady very much. I have to say that in light of the time, there are probably several of us up here and many in the audience who would like to have one of those hot dogs right about now. I thank the gentlelady very much.

We are happy to have with us the gentleman from Illinois, another freshman colleague, Mr. Flanagan.

STATEMENT OF HON. MICHAEL PATRICK FLANAGAN

Mr. FLANAGAN. Thank you, Mr. Chairman. I, too will be brief.

I have a prepared statement, which I ask unanimous consent to submit for the record.

Mr. CRAPO. Without objection, so ordered.

Mr. FLANAGAN. I would just like to emphasize one point and I'm sure I can do it within just a couple of minutes, and that is the concept of forced expansion. It is a myth.

The Judiciary Committee was able to see through this obfuscation and voted the bill out 24-6 in a bipartisan vote. There was nothing much contentious at the time we dealt with this myth.

What the bill says is that if a team wants to move, then it can move. But, because of the antitrust exemption given by the taxpayers of this country to that team and to the league, what you must do to ensure your original promise of stability in the league is to permit a qualified buyer to step up. That buyer must be willing to pony up literally hundreds of millions of dollars to do it, and no team is going to do that unless it is financially possible to do it, and they can have a franchise there.

If you want to call that forced expansion, that's forced expansion, but if a team moves across the river from Cincinnati or across the State line, out of Illinois or out of the city of Washington into Maryland or from New Jersey into New York, it would be a bold investor indeed who would be willing to part with several hundred million dollars thinking that yet another franchise could be supported in that media market.

If that man or that woman shows up with the sack of cash and says I'm willing to try to make a go of this and can meet the other criteria involved, the league must permit the Jets, the Giants, the Bengals or whomever, to continue to exist in that incarnation.

That is not too unreasonable and that is not too unfair, considering the leniency the taxpayer has given to the National Football League and to the NBA and others in this realm with the antitrust exemption.

All we are doing is exacting the promise for a promise. We gave them a license to have the antitrust exemption that no other business enjoys. We heard some discussion about GM's movement or other industry movement. No business has enjoyed an antitrust exemption. No business has that unfair place in the marketplace to be able to conduct business in a high handed way.

We gave that to NFL and we were right to do so, but we were also right to accept their promise of stability. That promise was not exacted and is something we should enforce.

I am sorry the gentleman from Michigan left. I wanted to talk to him about the doxology of the Republican religion and the theology therein. If he is ever interested in an ex cathedra discussion on his heresy he spoke today, then I will be happy to sit with him at any length. I would also like to note that I got 4 of the 5 commandments. I missed the fourth one. I would be interested in hearing that.

I thank the chairman for his time. I will not belabor this and I remain available for your questions.

[The prepared statement of Hon. Michael Patrick Flanagan follows:]

PREPARED STATEMENT OF HON. MICHAEL P. FLANAGAN, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, on April 25, 1996, the House Judiciary Committee, on which I serve, approved H.R. 2740, the "Fan Freedom and Community Protection Act of 1996" by a large bipartisan margin of 24 to 6. The legislation was introduced by our colleague, Congressman Martin Hoke and I am an original cosponsor of the bill. I also testified on behalf of the legislation before the House Judiciary Committee and am happy to be here today testify on it before your Subcommittee.

Mr. Chairman, there is a need for the "Fan Freedom and Community Protection Act." The thrust of the initiative is to support the fans and their communities. The fans are the ones who have given their loyalty to the teams in their cities and towns, from large urban areas like Chicago to small communities like Green Bay, Wisconsin. Without the fans and their support, the teams mean nothing, whether the sport be football, baseball, basketball, ice hockey or whatever. It is the fans who give the teams their die-hard emotional support and help. It is the fans who buy the tickets, the hot dogs and the programs and support their team and its community economically. It is these same loyal fans who are given short shrift when a team decides to relocate. When that happens, the fans and their community feel betrayed and abandoned, and rightly so.

The "Fan Freedom and Community Protection Act of 1996" helps protect communities by giving them some bargaining power should a team decide to relocate. Before a team moves notice has to be given not later 180 days before the beginning of the season in which the team is to play in the new community to the appropriate authorities, including the local government for the community in which the professional sports team's stadium or arena is currently located. Thus, there could no longer be a clandestine midnight exodus to another city similar to the way the Baltimore Colts fled their home for Indianapolis one dank, dark and dismal night for Baltimore Colts fans.

After a team has moved, the "Fan Freedom and Community Protection Act" requires either the National Football League, the National Basketball Association or the National Hockey League, as the case may be, to make an expansion team available to the community that has lost its team, provided certain criteria, such as finding a suitable investor, are met. In order to ensure that the time frame is not limitless, a city would have three years to identify an investor.

In the Judiciary Committee I offered an amendment, based on an idea of my hometown Mayor Richard Daley, that is now part of the bill. Mayor Richard Daley

and I are strong advocates of having a sports franchise that relocates prior to fulfilling its contractual obligations, and which has received public financial assistance, pay the community back for its help. Yesterday, Mr. John W. Barry, the managing editor of The Public Interest had a column in The Washington Times that looked favorably on the Hoke bill and referenced my amendment by noting:

"The Hoke bill also stipulates that the league would be obligated to make a city whole if a move is approved by the league. It would do so by forcing a team that leaves a city, and in doing so breaches a contract, to reimburse the city and other governments involved for any financial assistance it received."

Mr. Chairman, I believe this is an important protection that must remain in the bill. Teams need to know that they cannot skip out on the local taxpayer and leave them in the lurch. State and local governments need to be assured that if they give public financial support to a team they will be reimbursed for it should the team breach its contract with them. This bill now provides the necessary assurances to those governments as well as appropriate penalties for team owners should the reimbursement not be forthcoming. If a team owner does not comply, the owner is liable to the State or local government that provided the public assistance for an amount equal to three times the value of the financial assistance provided to the team. This is eminently fair and will certainly make a team owner think twice about not promptly reimbursing the State or local government for the public assistance the team received.

I am also pleased that another idea I advocated was incorporated by Judiciary Committee Chairman Henry Hyde into his substitute amendment when the bill was marked up by the Judiciary Committee. The impetus for my idea came from the threats of the Chicago Bears this past winter to move their team to Indiana. My proposal called for the law to be triggered should a team relocate across state lines. Although the Bears have had second thoughts and have backed off of their proposed relocation to Indiana, I still believe it of utmost importance that this provision be retained. Perhaps if such a law had been in effect a few years ago the New York Jets and the New York Giants would still be playing in New York rather than New Jersey, where they both had a long tradition.

Fans need and want stability. This bill will encourage that stability. It must be noted, however, that the legislation does not prevent or preclude a team from moving. The bill provides a balance that protects the interest of the fans and the communities, but still allows a team the freedom to leave a city, providing certain criteria are met.

I believe the Fan Freedom and Community Protection Act, as presently constituted and approved by the House Judiciary Committee is good legislation that does not need further hearings or markups. I believe that the legislation can, and should, next be sent to the House for its consideration.

Mr. CRAPO. I thank the gentleman very much and exercising the prerogative of the Chair, I will recognize myself for 5 minutes to ask a few questions.

I would like to address the first question to Mr. Hoke. We have heard from a number of people that your bill will create a forced expansion of NFL teams. I would just like to give you an opportunity to explain whether you think that is the case.

Mr. HOKE. I tried to address some of that in my opening remarks, but clearly, it is not the case. Nothing could be further from the truth. The fact is that what the bill does is create an opportunity for communities to receive an expansion franchise if the current team owner moves that team out of that community.

I think it is a very important distinction because the fact is that you know, this is private property. Those teams are owned by individuals. In the case of the NFL, they are individuals. In the case of the NBA, some are more corporate. I think you will see that movement in all of the leagues because they have become so very, very valuable.

What it does do is say, "that is your private property, Mr. Adams. You can take that property and you can go anywhere in the world that you want with it, we are not going to stop you from

doing it, but if you do and in fact, the market will bear a team in Houston, and the most eloquent, the most perfect way of knowing that is if somebody is willing to risk a quarter of a billion dollars to put another team in there, then League, not team owner, but League, you must create an expansion franchise for that community."

Why does it go to the league? It goes to the league because it was to the league that the benefits of these antitrust exemptions were given in 1961.

Mr. CRAPO. Let me ask you this question. Why wouldn't a simple exemption from the antitrust laws solve this problem? I would be interested in other witnesses' thoughts on this, too.

Mr. HOKE. You mean a simple exemption from the antitrust laws to make clear that the leagues could restrict team movement?

Mr. CRAPO. Correct.

Mr. HOKE. There is no incentive to restrict the team movement. All of the incentives are to actually allow teams to move. The truth is if you move, what you can do by moving is you can make cities bid against each other. Here is what it boils down to really in the case of the NFL.

They create a new stadium. The stadium has beautiful sky boxes. It has luxury loges. It has club seating. It has personal seat licenses. Those are all paid for by the taxpayers and as a result of that, those things, you know, the personal seat licenses, the sky boxes, the luxury loges plus the concessions, the parking, all of that goes directly to the bottom line of that team owner. There is no revenue sharing on that in the National Football League. Mr. Tagliabue can confirm that later.

Revenue sharing only applies to the overall broadcast rights as well as 40 percent/60 percent split between home and visiting teams on the ticket sales.

Mr. CRAPO. Ms. Jackson-Lee?

Ms. JACKSON-LEE. Might I simply, Mr. Chairman, and I thank you for your question, and let me also say that I want to thank Congressman Hoke for his leadership and appreciate the willingness that he has in working out issues in Judiciary. I know that he will be willing as we proceed through Commerce to be very sensitive to your concerns.

I think the incentive is a key point on the expansion. Also, there is something to planning. With this legislation and with the NFL knowing that there is an expansion component to it that again, is not a hammer, it simply says that if all these criteria are in place, this community has an opportunity to negotiate and engage in an opportunity to purchase an expansion team.

The NFL then poses itself in a position to plan, to have expansion teams available for such opportunities, whereas if you left it open, there would be the response that there is no availability, we can't do it. In this instance, of course, we know there is availability and with planning, there would be the possibility of working out an opportunity for a franchise with a reasonable market offer meaning that it is in the marketplace, you respect the fact that it is a business, and you get out there and negotiate.

That incentive codified, which allows for a 3-year span, and I think that's reasonable. Within a 3-year period makes it certainly

more responsive to the investment that our communities have made, the public dollar investment, which I think is a key point to the Federal Government stepping in to help solve a problem that we now have.

Mr. CRAPO. Mr. Bryant, did you have a comment on that?

Mr. BRYANT. I did. Thank you, Mr. Chairman.

Your answer as you posed it would be a proper solution, much better than the bill before this committee today. If we don't go that far, we can do about the same thing by adopting my amendment to this bill, which uses the 10 criteria that Mr. Hoke has in his bill to justify the move but allows an independent neutral court to conduct an expeditious hearing on that and make that determination as to whether those criteria have been followed or not. I think that is the better solution rather than using the mandated expansion requirements under the current bill.

This is mandated expansion no matter what you call it, if it looks like unfunded mandate, if it waddles like unfunded mandate and it quacks like unfunded mandates, it is an unfunded mandate and it is.

Mr. HOKE. Could I follow up on that question?

Mr. OXLEY. Let me recognize the gentleman from Chicago first.

Mr. FLANAGAN. Let me observe, apart from looking, quacking and marching, if you were to remove the antitrust exemption and do away with this and go in the other direction and say okay, we will just turn football loose, and the great city of Nashville was able to lure, let's say the Bears out of Chicago, we would be at the sufferance of the NFL to one day get a team back there or have to go on a pirating mission of luring some other team to Chicago, which is what you see going on now. The long and the short of it is to accomplish the goal of stability in the league, which was promised with the original antitrust exemption, if there is sufficient market force to create a team where a vacuum is being left by one leaving, a team shall be created there.

This does not seem unreasonable, extreme or bizarre and it hardly mandates an expansion, because you have to have somebody willing to stand up and pony up several hundred million dollars to do this and make the good business judgment that it is the right thing to do. I think it will make it more possible for stability in the league and not less so.

Mr. OXLEY. Mr. Hoke, we will let you respond and then we are going to recess for the vote.

Mr. HOKE. I will be real brief. I just want to say that what Mr. Bryant tried to do in his bill with respect to this judicial review amendment is exactly what I think Mr. Dingell was talking about. He was under the impression that this is a judicial review bill, and that it is going to create all this work for lawyers.

It is not. It does not have judicial review in it. Mr. Bryant wants to have a judicial review. I think it is absolutely the wrong way to go to give the courts authority over this, and also it is a de novo kind of a review, which I think the leagues would be very concerned about.

The fact is that the bill gives you the ultimate test. It is a market test. It is a market standard being applied to a tough regulatory issue. Instead of using regulation, instead of using a judicial

kind of approach or a bureaucratic approach, we are using a market approach. It is the beauty of the bill.

Mr. OXLEY. I thank the gentleman. Let me say that the gentleman from New York has some questions. His questions are for Mr. Hoke. If the other members of the panel don't wish to return, if you have other issues—I know the gentlelady is involved in the budget debate. We would be pleased to excuse you at that point. If you want to come back and have some fun, that's also possible.

The committee will stand in recess for the vote on the floor.

[Brief recess.]

Mr. OXLEY. The subcommittee will reconvene.

Mr. MANTON is recognized for 5 minutes.

Mr. MANTON. Thank you, Mr. Chairman.

At the outset, I'd just like to congratulate in a sense our colleague, Mr. Hoke, for obviously putting a lot of time into his legislation. He had the courtesy to come visit me on my first day as ranking member yesterday to proselytize, if you will, for his bill. Having said that, there are some questions I would like to ask. I am sure he will be able to do that.

Your bill was referred to the Judiciary Committee and also to this committee. Some have suggested there is pressure to bypass this committee and take the bill directly to the floor.

Have you heard anything to that effect?

Mr. HOKE. No, I don't know about pressure. All I know is there is a process. Those things are well above my pay grade, Mr. Manton.

Mr. MANTON. I would assume you would be strongly opposed to bypassing this committee?

Mr. HOKE. I didn't say that. Obviously, what I'm strongly in favor of is getting this bill passed. I think this is great public policy. I think it is great legislation. I'm interested in seeing that it becomes law.

Mr. MANTON. For the record, is it correct to say that you support following normal and usual rules and procedures for considering your bill, including appropriate hearings, conducting full and open markups, both in this subcommittee and in the full committee?

Mr. HOKE. Mr. Manton, this is an interesting line of questions and as well you know, there are lots of procedures and some of those procedures include a very well laid out and long traditionalized waiver process.

You know, I'm sure that Mr. Bliley appreciates your help but I suspect that the chairman of the full committee is perfectly able and will make whatever decisions he thinks are appropriate under the circumstances.

Mr. MANTON. You would support either procedure, either the usual procedure or some kind of short cutting?

Mr. HOKE. I would support anything that gets this bill passed on the floor of the House of Representatives, as quickly as possible. My assumption is that nothing could possibly be passed on the House floor that wouldn't be within the rules.

Mr. MANTON. Do you support an open rule for the debate on the floor?

Mr. HOKE. I'd support whatever the Rules Committee thinks is appropriate.

Mr. MANTON. I have a letter dated May 2, 1996 from the Mayor of Cleveland, Michael White. I would ask the Chair for unanimous consent that it be made part of the record and be included in full.

Mr. OXLEY. Without objection.
[The letter referred to follows:]

CITY OF CLEVELAND,
CLEVELAND CITY HALL,
May 2, 1996.

The Honorable THOMAS J. MANTON,
Committee on Commerce,
2235 RHOB, Washington, D.C. 20515-3207.

DEAR CONGRESSMAN MANTON: I am writing in regard to HR 2740, sponsored by Congressman Martin Hoke, which has been referred to the House Commerce Committee for consideration. Based on the experiences which the City of Cleveland has had since Art Modell announced his secret deal to move the Cleveland Browns, I am convinced that HR 2740 is an unrealistic attempt to address franchise relocation occurring within the National Football League.

Included in HR 2740, is the notion of forced expansion of the National Football League in communities that have not shown either economic or fan support. From a personal standpoint, I regard football and other professional sports as an economic proposition. Having been in government service for more than 23 years, I have never seen local, state or federal government seek to force such an inappropriate economic proposition upon either a sports league or any other business. Congressman Hoke's legislation would unfairly compel the National Football League—and potentially other sports leagues—to retain economically unviable ventures in cities. This illogical, anti-competitive legislation could ultimately doom major league sports and the attendant economic benefits. Such an approach flies directly in the face of the private-public partnerships that both political parties have championed for the last two decades.

The subject of forced expansion was discussed in great detail during the United States Conference of Mayors Annual Winter Meeting. Houston's Mayor Bob Lanier and I served as co-chairs of the Sports Franchise Location Task Force, appointed by Mayor Norman Rice, President of the United States Conference of Mayors (USCM). The purpose of the Task Force was to study the various legal and economic factors which foster the dislocation of professional sports teams. At the Winter Meeting, the Task Force convened to consider policy options for adoption by the USCM.

During this meeting, Congressman Hoke was offered the opportunity to make a comprehensive presentation on the issues that will be placed before your Committee—specifically the notion of forced expansion. While Congressman Hoke made a spirited defense of this position, the idea of forced expansion was rejected by all members of the Task Force except Mayor Bob Lanier and was not included in the USCM policy resolution.

I urge you as a member of the House Commerce Committee to have thorough, detailed hearings regarding this legislation to discuss such concerns. If you allow Congressman Hoke's legislation to by-pass your committee, a great disservice will be done to millions of fans and scores of cities across the country.

It is my understanding that the Fans Rights Act (HR 2699 and SB 1439), sponsored by Congressman Louis Stokes and Senators John Glenn and Mike DeWine, has achieved bipartisan support among Members of Congress. This legislation contains many of the provisions supported by the USCM resolution. In my opinion, the Fans Rights Act would be the appropriate vehicle for addressing the issues of franchise relocation.

Again, I hope you will give serious thought and consideration to these issues before enacting a patently, anti-business and anti-city bill on the question of NFL relocation.

Sincerely,

MICHAEL R. WHITE,
Mayor.

cc: U.S. Senator John Glenn
U.S. Senator Mike DeWine
U.S. Congressman Louis Stokes

Mr. MANTON. I thank the chairman.

Mayor White calls H.R. 2740, "illogical, anti-competitive legislation that could ultimately doom Major League sports and the attendant economic benefits."

Mayor White asks this committee to reject H.R. 2740 as a "patently anti-business and anti-city bill," and suggests that H.R. 2699, introduced by our colleague, Representative Stokes, and continuing to quote, "would be the appropriate vehicle for addressing the issues of franchise relocation."

I also note that a similar bill was introduced by Senator DeWine and Senator Glenn.

Isn't it true that Mayor White has taken the lead in representing the city of Cleveland's interest with respect to the relocation of its football team to Baltimore? Is that accurate?

Mr. HOKE. What's accurate, Mr. Manton, is that unfortunately, Mayor White has apparently for a number of reasons, and I'm not clear on what all those reasons are—I can only speculate—has decided to oppose this bill.

He negotiated valiantly on behalf of the city of Cleveland an agreement with the National Football League. I speculate, I have no specific evidence of this, on the other hand, I have no reason to believe it's not true, I speculate that perhaps part of the unwritten agreement was that he would work to oppose this bill as part of the deal that was made with the National Football League.

Mr. MANTON. You don't have any knowledge of that directly?

Mr. HOKE. No, I have no knowledge of that at all. I do know this, Mr. Manton. I do know that Mr. White is a member of the opposing party. I know that we have a very tough political situation in the elections this Fall. I know that Mr. Stokes is a member of the opposite party. I know that the poison of partisanship—

Mr. MANTON. The—

Mr. HOKE. May I finish my one answer? I know that the poison of partisanship has reared its ugly head in this situation and in others.

Mr. MANTON. I'm asking the questions.

Mr. OXLEY. The time of the gentleman has expired.

Mr. MANTON. May I have an additional minute?

Mr. OXLEY. Without objection.

Mr. MANTON. I think you, yourself, raised issues of partisanship here. Are you making the same charges?

Mr. HOKE. No, I didn't raise that. The issues of partisanship have been raised by a number of members on your side. I would also point out that Mr. White was invited to testify today. He chose not to. Mr. Stokes was invited to testify today. He chose not to.

Mr. MANTON. I understand Mr. Stokes is tied up in another committee and he may very well be here. Is that correct, Mr. Chairman?

Mr. OXLEY. He had planned to be but was uncertain.

Mr. MANTON. In any event, I have limited time left.

It is my understanding that at the U.S. Conference of Mayors, with the exception of perhaps one mayor of a major city, voted against your bill; is that correct?

Mr. HOKE. I think that's incorrect. I think the co-chairman of that Task Force that is going to testify later can speak to that. You can ask him.

Mr. MANTON. I understand that.

Mr. HOKE. I think your information is incorrect on that.

Mr. MANTON. We will find out.

Mr. OXLEY. The gentleman's time has expired.

Mr. MANTON. Thank you.

Mr. OXLEY. Let me ask the gentleman, Mayor White clearly cut his deal with the NFL. I can understand why he would be concerned about legislation after that fact. Is it also true that as part of that deal, Cleveland will not have professional football for three seasons?

Mr. HOKE. That's correct. It is also a fact that certain conditions still have to be met that have not been met by the city. I assume they will be met. It is also a fact that the new team will cost our community about \$340 million, including all the interest.

Mr. OXLEY. What was the agreement in terms of compensation from the National Football League to the city of Cleveland to build a new stadium?

Mr. HOKE. There is an agreement that after \$210 million has been expended on the hard costs of the stadium—and I may be wrong—it may be \$200 or \$210 million—that the National Football League would lend—not give—lend up to \$50 million toward the construction price that would have to be repaid with interest by the new owner.

Is that the part that you are referring to?

Mr. OXLEY. Yes. The \$50 million then is a loan?

Mr. HOKE. It is absolutely a loan. I saw a letter that created the misimpression that this was a contribution, a gift, an investment, however you want to describe it. That is not correct. It is a loan that has to be repaid with interest. That's my understanding.

The Commissioner of the National Football League is here so he can either confirm that or modify it.

Mr. OXLEY. The bill that came out of the Judiciary Committee, what was the vote on that?

Mr. HOKE. It was 24-6.

Mr. OXLEY. Ms. Jackson-Lee, you are on that committee; is that correct?

Ms. JACKSON-LEE. Yes, I am, Mr. Chairman.

Mr. OXLEY. You voted for the bill?

Ms. JACKSON-LEE. I voted for the bill. Might I add just a comment. I think Mr. Manton's point raises and deserves a response. I hope as we did in Judiciary, that we will draw a bipartisan vote. What we are trying to avoid is just what we saw in Cleveland. I respect the respective leadership of different cities. I come from local government as a former city council person. I know the press of limited resources and the desire of local officials to respond to the outcry, if you will, of their local constituents.

H.R. 2740 will relieve that burden by eliminating the need for false and forced bidding by cities against each other with limited resources for a prize, if you will, that has a real economic impact on their community.

I would think that if we could look at this legislation and see opportunities for compromise, we might find in it an opportunity or a relief so that you would not have at least the projected image that cities are in disagreement.

They have to do what helps their particular locale. We want legislation that gives all cities and local jurisdictions an even playing field to get in the game, based on criteria that supports ownership, supports the private enterprise, and simply says that all right, if you want to play the game, if you meet all this criteria and if you have the money, you have an opportunity.

I'd like to see us not have outstanding mayors and county officials be pitched against each other, hurting all of their constituents. I think we can resolve this so that we provide that even playing field and to ensure fairness for all of us.

Mr. OXLEY. Thank you. Let me now recognize the ranking minority member of the full committee, the gentleman from Michigan, Mr. Dingell.

Mr. DINGELL. Mr. Hoke, welcome to the committee, delighted to see you here.

Mr. HOKE. Good to see you. Thank you.

Mr. DINGELL. I'm also pleased to welcome you to the ranks of those of us who are accused of favoring actions of big government and intrusion into the day to day affairs of American business.

I think this probably represents a conversion that would rank right after the conversion of St. Paul.

Let me talk to you a little bit. In your statement before the Judiciary Committee at page 7 said "the third component is critical. It states that once a team has been relocated in a community for 10 years, the team name, logo and other colors stay with the city. In other words, if the owners decided to move, they can't take the team's name with them."

Mr. HOKE. Pardon me?

Mr. DINGELL. I was reading from your statement.

Mr. HOKE. I'm sorry, the last part. You added something, I think.

Mr. DINGELL. I said that in other words, the owners who decide to move can't take the team's name with them. That's a quote from your remarks to the Judiciary Committee.

Mr. HOKE. What is the date of that?

Mr. DINGELL. Testimony of the Honorable Martin Hoke before the House Judiciary Committee, February 6, 1996. If you didn't say it, I'd be delighted to correct the Judiciary Committee or correct whoever it was that made this available.

The Judiciary Committee took that provision out of the bill. Do you support that or not?

Mr. HOKE. Which provision?

Mr. DINGELL. Taking the requirement that the logo remain in the city. Do you support the action of the Judiciary Committee on that matter or not?

Mr. HOKE. Yes.

Mr. DINGELL. You do support it?

Mr. HOKE. Apparently, you have been given an earlier draft of the bill from your opening remarks. The things that you were concerned about, the trademark issues, the FTC—there is no FTC re-

view, it is the Department of Justice as well as the question about judicial review are not in the bill.

Mr. DINGELL. I have the bill, H.R. 2740, before me.

Mr. HOKE. Do you have the one as reported?

Mr. DINGELL. It's not in the bill?

Mr. HOKE. No, it's not, sir. Do you have the one as reported from the Judiciary Committee?

Mr. DINGELL. I have two bills here. One is the bill as introduced.

Mr. HOKE. No. I'm talking about as passed by the Judiciary Committee.

Mr. DINGELL. The other one is the bill that was reported out by the Judiciary Committee.

Mr. HOKE. That's the bill that we are talking about. Do you deal with the bill as it is introduced or do you deal with it as it has been sequentially referred? Maybe I misunderstand the process.

Mr. DINGELL. I want to make sure I know what your feelings are because I'm in sympathy with what it is you are trying to do, although I'm not sure of the methodology. The bill as reported by the Judiciary Committee also has a requirement for professional team owners to reimburse State and local governments for the value of financial assistance received.

I'm curious. Does that create a Tucker Act liability on the part of the Federal Government?

Mr. HOKE. If you will look at that, what you will see is that there is an exception so that the requirement does not exist if the contract between the community and the sports team speaks to this issue.

Mr. DINGELL. If there is no contract, then that provision would apply?

Mr. HOKE. The provision applies if there is no lease agreement between the community or the stadium authority and the team.

Mr. DINGELL. There is another question here. On this business of the logo, I was looking at that. I was curious. Could you help us and tell us whether that would create a liability on the part of the Federal Government?

Mr. HOKE. Mr. Dingell, there is no logo provision in this bill.

Mr. DINGELL. Pardon?

Mr. HOKE. There is no logo provision in this bill.

Mr. DINGELL. Let's go to the league requirement to grant franchise. That is at page 6 of the bill. It says that the league shall grant to the investor a new expansion and professional sports team franchise from the league at a fee and at an amount no greater than an amount equal to 85 percent of the franchise fee.

Mr. HOKE. You are not looking at the bill that was reported by the Judiciary Committee, sir.

Mr. DINGELL. That's not in the new bill?

Mr. HOKE. No.

Mr. DINGELL. By curiosity, would that create a Logan Act liability or constitutional liability on the part of the Federal Government?

Mr. HOKE. I was under the impression that we were talking about the bill as reported by the Judiciary Committee, sir.

Mr. DINGELL. None of these things are in the bill as reported by the Judiciary Committee?

Mr. HOKE. The things that you have asked me about are not in the bill as reported by the Judiciary Committee.

Mr. OXLEY. The gentleman's time has expired.

Mr. DINGELL. Thank you, Mr. Chairman.

Mr. OXLEY. The gentleman from Texas, the vice chairman of the subcommittee.

Mr. FIELDS. Mr. Chairman, I'll try to be very brief. I know you want to move to other panels.

Let me ask Ms. Lee, you and I represent contiguous districts. You and I both come from blue collar communities and have represented blue collar constituencies. It has been those people along with all of the other people in the city and the county who have paid for the infrastructure improvements, modernization and expansion of the Astrodome, parking lots, roads, many things that actually inure to the benefit of the franchise.

Also, let me just add that our mayor and our county judge have worked diligently to try to meet some of the demands that were made by that ownership. I get the distinct impression that our city and county leadership have been very frustrated in trying to meet the demands. I feel that our constituencies are extremely frustrated.

Do you get that same impression?

Ms. JACKSON-LEE. I think the gentleman raises an excellent point. We do have contiguous districts that share in the demographics of just hard working citizens. That is the distinction that I bring to the table, between the possibility of a General Motors or Chrysler or an energy company or some other business moving.

The facilities usually that the franchises play in are quasi-public facilities, facilities that are expanded, enhanced, improved by public taxpayer dollars.

As an example, I know the gentleman recalls when we were very excited about the potential of getting a Super Bowl in Houston. One of the representations made to the local government was if you provide additional seating, luxury boxes, we had a darn good chance of getting a Super Bowl in the late 1970's and into the early 1980's and of course, we are now in 1996.

The community made a commitment to do so and made improvements to the Astrodome. I think that is an example of what this legislation could correct. Again, it would cease and desist or cause to desist the uneven competition between cities using precious resources, although it would not take the business out of the free marketplace because it would allow any city to begin a process of negotiations on the realistic costs of that particular franchise.

You would have an evenness on both sides of the issue. I think your point is very well taken. I would just like to conclude by saying, Mr. Fields, that it would also help those working men and women, as you well know, who are working in that business, besides those who are out on the playing field, the support system, by not taking such a valuable franchise away from a community.

Mr. FIELDS. I might also ask the gentlelady if she agrees and let me respond to something my friend from Tennessee said in his opening statement, I don't see this as a situation now with us competing with Nashville. We have great respect for the players, for

the coaches, but I would be less than candid if I didn't say there is very bad blood directed toward the ownership.

I also want to say personally that it appears to me that our city officials, our county officials, are dealing with a monopoly. You know, someone who could say I don't care what you say, we are going to tell you what you can have, you don't have a competitive private sector situation, particularly after our community has devoted so much of its resources, resources paid for by the working men and women that we represent.

Do you agree with that basic statement?

Ms. JACKSON-LEE. Clearly, I would say to you that I, too, have not heard an unkind word being the call of the day in Houston about Nashville and Nashville's deal. We have said over and over again, we are not attempting to bust the deal in Tennessee and there is no language, no language in H.R. 2740 that says that.

What it simply says is that when local officials begin to put their heads together, albeit maybe not as fast as ownership would have liked, because we are dealing with public dollars, when they begin to try to assess what could be offered, it seems as if the door was already closed. This legislation says that the door remains open and I think that is clearly a fair statement.

Might I remind you also of something I know you acknowledged, the Mayor is here, but Mrs. Denise Lanier is here, and I consider her a rabid, if I might use that term, sports fan, because she as a First Lady, wrote Sports Illustrated when they did not give proper due to our Houston Rockets.

I think if there was ever a duo or a couple that welcomes and appreciates what our teams do for us, it would be the Mayor and First Lady of Houston.

Mr. FIELDS. I want to say I was politically correct earlier because I did recognize the First Lady.

Ms. JACKSON-LEE. Then I stand corrected. I've added the anecdote then that she is a rabid fan.

Mr. FIELDS. She is a rabid fan. Thank you.

Mr. OXLEY. The gentleman's time has expired. The gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. Hoke, you have indicated there have been letters and misimpressions concerning letters. I believe you even mentioned Mr. Rozelle's letter in response to your colleague. With unanimous consent, Mr. Chairman, I'd like to enter that letter.

Mr. HOKE. It would have been hard for Mr. Rozelle to have written a letter in response to my dear colleague.

Mr. STUPAK. How about I have unanimous consent to enter that letter and we will provide you with a copy, Mr. Hoke.

Mr. HOKE. Mr. Rozelle's letter?

Mr. STUPAK. Yes.

Mr. HOKE. I'd love to see it.

Mr. OXLEY. Without objection.

[The letter referred to follows:]

Pete Rozelle
 16092 San Dieguito Road
 P.O. Box 9773
 Rancho Santa Fe, CA 92067

May 11, 1996

The Honorable Thomas J. Bliley, Jr.
 Chairman, House Committee on Commerce
 United States House of Representatives
 2241 Rayburn House Office Building
 Washington, D.C. 20515-4607

Re: H.R. 2740

Dear Chairman Bliley:

I continue to believe that the public interest would be well served by federal legislation that removes the threat of antitrust treble damages from a sports league's consideration of proposed franchise relocations. And I am fundamentally opposed to any provision requiring, even conditionally, that a professional sports league expand and take on a new business partner -- as the price of such legislation.

I understand that proponents of H.R. 2740, the so-called Fan Freedom and Community Protection Act, are relying on my testimony from decades ago to justify that bill's forced expansion provision. I am truly outraged by such use of my testimony, which cannot fairly or reasonably be construed as supporting such an irrational and punitive result.

Let me illustrate this point by citing the two excerpts of my testimony upon which Representative Martin Hoke relies in his "Dear Colleague" letter of May 1, 1996.

The first passage is from my testimony of October 6, 1966 -- thirty years ago -- before a subcommittee of the House Judiciary Committee. This testimony addressed proposed legislation that ultimately led to the merger of the National Football League and the American Football League. Congressman Hoke relies upon and emphasizes the following passage from that testimony:

"Without the [merger] plan, franchise moves and/or franchise failures will occur as a matter of course within the next few years."

(The underlined phrase is ~~deleted~~ from the Congressman's "Dear Colleague" letter.)

The point expressed by that passage is no less clear today than it was in 1966. As I said moments after the quoted passage:

"Without the plan, contraction rather than expansion will be the ultimate consequence, as the developing economic conditions in professional football successively put more and more franchisees into difficulty.

. . .

The results would be player costs soaring ever upward, increasing internal deterioration of both leagues, increasing inequalities of team play within each league and the development of conditions where the ability to field representative football teams will depend solely on the franchise's willingness and ability to stand increasing losses."

Put simply, the point I made in 1966 was that without such legislation, numerous franchise relocations and failures were inevitable. I never suggested that with such legislation, franchises would forever remain in their current locations or for that matter, that with such legislation, franchises would forever be immune from failure.) Nonetheless, for more than fifteen years after the legislation was passed -- until a federal court in Los Angeles ordered the League, over our objection, to allow the Raiders to move to Los Angeles -- there was no franchise movement in the NFL.

Insofar as league expansion is concerned, I represented to Congress in 1966 that if the merger were permitted to go forward, "[t]wo new franchises will be added by the 1968 season, making a total of 26 teams," and that "[s]tudies will then be made of the feasibility of adding two more franchises." The NFL kept its word and then some. We added two new teams Atlanta and New Orleans in the 1960s. We added two more teams -- Tampa Bay and Seattle -- in the 1970s. And the NFL recently added two more teams Carolina and Jacksonville -- removing any conceivable basis for suggesting either (1) that the League has not satisfied any express or implied expansion obligation arising from the 1966 Act or (2) that the League is not prepared to consider expansion -- on its own -- in an orderly and responsible manner.

It is even harder to understand Congressman's Hoke's reliance on my December 10 1981 congressional testimony. (Congressman Hoke's "Dear Colleague" letter incorrectly refers to July 14, 1982, as the date of this testimony.) The passage upon which Congressman Hoke relies reads as follows:

"The economic survival of every member club of the NFL fundamentally depends upon the operations, conduct, and decisions of the entire league. Congress recognized this in enacting the 1961 sports television legislation, so that NFL network television arrangements could be made on a league-wide basis with all of the revenues shared equally among all of the league's members. And Congress properly looks to the leagues for responsible conduct in the administration of their nationwide business affairs." (Emphasis added by "Dear Colleague" letter.)

Those facts support the need for clarifying legislation here; they offer no support for a forced expansion provision.

Because the "economic survival of every member club . . . depends upon the operations conduct and decisions of the entire League," the League must be able to control franchise relocations and, in particular, to bar unjustified moves. The crucial point for current purposes, however, is this: Although "Congress properly looks to the League for responsible conduct in the administration of their nationwide business affairs," the federal courts -- in particular the Raiders court -- have distorted the antitrust laws in a manner

that prevents the League from exercising its reasonable business judgment in evaluating proposed franchise moves. As I said in the sentence that followed the passage quoted above: "The antitrust courts, however, are in the process of rendering leagues powerless to act." Recent events have proven that to be the case.

Neither common sense, economic theory, nor sound public policy supports the notion of forced expansion as the price of legislation that would allow a sports league to make, without the threat of treble damage liability, a decision that every other business in America is free to make every day: where to conduct its business.

I urge you and your committee (1) to support legislation that would clarify the antitrust laws in this area and eliminate the treble damage threat and (2) to resist any provisions -- such as those in H.R. 2740 -- that would call for forced expansion.

Sincerely,


Pete Rozelle

Mr. STUPAK. I'm sorry, where you quoted Mr. Rozelle; right? I'm sorry. I stand corrected. You quoted from Mr. Rozelle about his testimony; right? There's the letter to Mr. Bliley; correct? You have referred to that letter today in your testimony; correct?

In the letter to Chairman Bliley, and we are talking about in quotes, there has been a lot of reference to it, "I continue to believe that the public interest would be well served by Federal legislation that removes the threat of antitrust treble damages from a sports league's consideration of proposed franchise relocations, and I'm fundamentally opposed to any provisions requiring even conditionally that a professional sports league expand and take on a new business partner as the price of such legislation."

"I understand proponents of your bill, H.R. 2740, the so-called Fan Freedom and Community Protection Act, are relying on my testimony from decades ago to justify the bill's forced expansion provision. I am truly outraged by such use of my testimony, which cannot fairly or reasonably be construed as supporting such an irrational and punitive result."

The letter goes on to say "Put simply, the point I made in 1966..." this is Mr. Rozelle now, "... was that without such legislation, numerous franchise relocations and failures were inevitable. I never suggested that with such legislation, franchises would forever remain in their current locations or for that matter, that with such legislation, franchises would forever be immune from failure. Nevertheless, for more than 15 years after legislation was passed, this is 1960 and 1966 legislation you spoke of, until a Federal court in Los Angeles ordered the league, over our objection, to allow the Raiders to move to Los Angeles, there was no franchise movement in the NFL."

"Insofar as League expansion is concerned, I represented to Congress in 1966 that if the merger were permitted to go forward, two new franchises would be added by the 1968 season, making a total of 26 teams, and studies will then be made to the feasibility of adding more franchises. The NFL kept its word by adding two more franchises. We added two new teams, Atlanta and New Orleans in the 1960's. We added two more teams, Tampa Bay and Seattle in the 1970's, and the NFL recently added two more teams, Carolina and Jacksonville, removing any conceivable basis for suggesting either that the league has not satisfied any expressed or implied expansion obligation arising from the 1966 Act or that the league is not prepared to consider expansion on its own, in an orderly and reasonable manner."

Let me skip down a little bit more, because this letter was part of your "Dear Colleague..." "...neither common sense, economic theory nor sound public policy supports the notion of forced expansion as the price of legislation that would allow a sports league to make, without the threat of treble damage liability, a decision that every other business in America is free to make every day, were to conduct its business. I urge you and your committee, No. 1, to support the legislation that would clarify antitrust laws in this area and eliminate the treble damage threat, and to resist any provisions such as those in H.R. 2740 that would call for forced expansion."

My question is, after reading this letter, and again, we have a copy there for you, how can you say that this was a promise made with the passage of the Act in 1961 when the AFL and NFL came together and then again in 1966, how can you say, you know, they have never expanded and followed their commitments in this area here?

Mr. OXLEY. The gentleman's time has expired. The witness may respond.

Mr. DINGELL. Mr. Chairman, can I be recognized briefly for a unanimous consent request?

Mr. OXLEY. The gentleman from Michigan is recognized.

Mr. DINGELL. Mr. Chairman, I ask unanimous consent that the testimony of Mayor Michael White, Mayor of Cleveland, be inserted in the record. I ask unanimous consent that the testimony of our colleague, the Honorable Louis Stokes, be inserted in the record, and also that the testimony of the Honorable John Glenn, United States Senator from Ohio, be inserted in the record at the appropriate place.

Mr. OXLEY. Without objection.

[The prepared statements of Mayor Michael White, Hon. Louis Stokes, and Hon. John Glenn follow:]

PREPARED STATEMENT OF MICHAEL R. WHITE, MAYOR, CLEVELAND, OHIO

I appreciate the opportunity to address your Subcommittee on the important topic of Sports Franchise Free Agency. As you are aware, the City of Cleveland found itself facing the potential loss of our Cleveland Browns professional football franchise, which had been a beloved part of our community for 50 years. Even though negotiations with the National Football League, resulted in a historic agreement, I believe Congressional action is needed to adequately address the issue of sports franchise free agency. However, before proposing such solutions, I would like to discuss the origin of the problem, with particular emphasis on the NFL's 1993 Collective Bar-

gaining agreement and the impact of Sports Franchise Free Agency upon cities' treasuries and urban development policies.

I. THE ORIGINS OF SPORTS FRANCHISE FREE AGENCY

The first wave of Sports Franchise Free Agency occurred in Major League Baseball from the mid 1950's to the early 1960's. The initial franchise shifts reflected cities' recognition that they could no longer support two baseball teams. The Boston Braves moved to Milwaukee in 1953; the St. Louis Browns moved to Baltimore in 1954; the Philadelphia Athletics moved to Kansas City in 1955. These were minor shifts when compared to the controversial 1958 moves of the Brooklyn Dodgers and the New York Giants to Los Angeles and San Francisco.¹ As stated by Gerald Astor in *The Baseball Hall of Fame 50th Anniversary Book* (1988):

As in other cases, the proprietors could point to obsolete ballparks (Ebbets Field seated less than thirty thousand), deteriorating neighborhoods, and a drop in attendance. But the faraway new homes offered not only improvements in these areas but also vast untapped markets.²

Baseball expansions followed shortly thereafter, as new franchises were awarded to Minneapolis and California in 1961 and to Houston and New York in 1962.

The period in baseball's history was a precursor to the trends we are seeing in the NFL in the 1990's. Then, as now, rapidly growing Sunbelt cities were putting together extraordinary financial proposals in an effort to attract teams from more established cities. These newer cities regarded the attraction of a franchise as a validation of their national significance and were willing to offer attractive relocation terms to obtain this status.

Meanwhile, the NFL proceeded on a relatively ordered process of gradual expansion from the 1960's through the 1970's. In the early 1980's two franchise shifts disturbed the equilibrium. In 1982, the Raiders defied the NFL and moved from Oakland to Los Angeles. The NFL sued Raiders' owner Al Davis, but Davis parlayed court victories on antitrust claims into a substantial favorable settlement from the NFL. NFL owners have been reluctant to contest franchise moves ever since.

In 1984, Robert Irsay's Colts conducted the infamous "moving van" exit from Baltimore to Indianapolis (and a lucrative lease deal in the newly constructed Hoosier Dome). Both the Oakland and Baltimore moves tarnished the NFL's image. Oakland's rabid fan base had supported the Raiders from their inception. Baltimore's Colts were an integral part of the NFL's heritage, and the city's fans had regularly filled Memorial Stadium until the last several years of Irsay's tenure in Baltimore.

However, neither Oakland nor Baltimore had developed significant stadium upgrade plans on the eve of the franchise moves.

The current chaotic pattern of franchise shifts can be traced to two significant events; the 1993 expansion and the 1993 Collective Bargaining Agreement.

In 1993, the NFL narrowed its list of potential expansion sites to five cities: Baltimore, St. Louis, Charlotte, Jacksonville and Memphis. Significantly, each competing city had to demonstrate to NFL auditors the ability to finance a stadium *and pay a one-time \$150 million league entry fee*. The NFL selected Charlotte and Jacksonville in late 1993, and ever since the Baltimore and St. Louis financing packages have remained as "ticking time bombs" threatening cities with existing franchises. Both bombs went off in 1995, with Los Angeles and Cleveland as the victims.

The impact of the 1993 Collective Bargaining Agreement is explained in a recent Sports Illustrated article:

"As many as eight of the NFL's 30 teams are plotting moves to new cities or new stadiums. To understand why, it is necessary to understand recent NFL economics, particularly the impact Dallas owner, Jerry Jones has had on the way every pro-football team does business.

When the NFL and the player's union agreed to a six-year salary cap beginning in 1993, the league thought it had found the perfect solution to skyrocketing labor costs. Each team would spend about 63% of the teams' average gross revenue each year on the players. But while the average gross revenue in 1994 was about \$62 million (meaning each team could spend, including benefits and pensions, about \$39 million for players), there was a growing inequity. Jones... spent \$40.5 million on signing bonuses for players in 1995. Because the '93 bargaining agreement allows teams to prorate signing bonuses equally over the life of contracts, only \$14.6 million of that huge signing bonus pool counts against the Dallas salary cap in

¹ Gerald Astor, *The Baseball Hall of Fame 50th Anniversary Book*, (Prentise Hall Press, 1988), page 254.

² *Ibid*

1995... "Stadium deals have become important because economics in the NFL have changed", says Chicago Bear Vice President, Ted Phillips. "It used to be that what was important was market size. Now the determining factor between the haves and the have-nots isn't market size, it's stadium economics. That's why there are not teams in Los Angeles and that's why this is happening with the Browns."³

Although the NFL and the Players Association are reportedly discussing revisions to the 1993 Agreement, the demand for competitive stadium economics will continue to drive franchise relocation until legislative reform is achieved.

II. IMPACT OF SPORTS FRANCHISE FREE AGENCY UPON MUNICIPAL FINANCES AND URBAN DEVELOPMENT

We have identified at least four significant impacts on American cities: teams are extracting exorbitant lease deals; shortening stadium life spans place excessive demands on scarce tax dollars; cities' economic development projects are imperiled; and moderate income fans are being priced out of the market.

A. Teams Are Extracting Exorbitant Large Deals.

In the 1990's, the intense competition for NFL franchises has resulted in truly extraordinary lease terms for expansion and relocation franchises. Zero rent is now the rule rather than the exception, and the stadium revenues are now almost exclusively earmarked to the teams. As a consequence, cities must devise tax sources to fund virtually all costs of new or renovated stadiums, and/or cities must face the possibility of franchise movement if they cannot keep up with the financial demands as a result of lack of stadium revenue sharing.

B. Shortening Stadium Life Spans Place Excessive Demands On Scarce Tax Dollars.

The 1990's have unveiled an alarming trend in stadium financing. For most of this century, cities only replaced stadia when the facilities became *structurally obsolete*. Recently, however, owners are deserting perfectly sound structures on the alleged grounds that they are *economically obsolete*.

The trend is illustrated in the attached Table 1. Stadia constructed in the early decades of this century achieved useful lives of 50-75 years. However, recent developments in Cincinnati and Seattle suggest the *complete abandonment* of stadia with respective useful lives of 26 years (Riverfront Stadium opened in 1970) and 19 years (the Kingdome opened in 1977). Given that communities' scarce tax dollars are already stretched too far to fund schools and other public needs, it is our view it is *completely inappropriate* for team owners to demand new sports facilities when existing facilities have many years of potential use.

C. Cities' Economic Development Projects Are Imperiled.

Cleveland's case is illustrative of this significant urban development problem. Cities rarely base their stadium funding decisions solely on recreational grounds. Most cities try to use their stadium investments as catalysts for adjacent development. Cleveland is no exception as the historic Municipal Stadium has served as an anchor for economic development projects such as the Rock and Roll Hall of Fame and Museum, which will attract millions of tourists to the Cleveland Waterfront area well into the next century.

It is one thing when a city "rolls the dice" in its economic development planning based on speculative attendance projections. It is quite another when—as in Cleveland—we based our plans on regular crowds of 70,000 since 1960, only to see the team attempt to break a lease and leave a huge hole in the city's lakefront development efforts. A lakefront stadium was, is and will always play a significant role in the development of the Cleveland Waterfront area.

D. Moderate Income Fans Are Being Priced Out Of The Market.

Virtually every new stadium deal now includes a significant "permanent seat license" ("PSL") financing component. Although the implementation of PSLs is often accompanied with financial packages which make PSLs available to all but those of the most modest means, the wisdom of allocating the limited resources of a lower or even moderate income family to PSLs is certainly debatable. Thus, one can certainly foresee a trend towards homogeneous, upper class stadium crowds in the late 1990's. Ethnic, racial and economic melting pots such as Cleveland Stadium's famed "Dawg Pound" may well be in jeopardy.

³ Peter King, "Down And Out", *Sports Illustrated* (November 13, 1995), pages 31-32.

II. PROPOSED SOLUTION

I can not assure you that Congressional action can solve all of the problems cited in Section II above. However, we believe the following in the form of legislation can be a big part of the solution:

- (1). *Limited Antitrust Exemption For League Relocation Decisions.*—With this limited exemption for antitrust laws, professional sports leagues could enforce their internal rules prohibiting or restricting the relocation of member clubs. This provision would remove the anti-trust concerns that have troubled owners ever since their unsuccessful challenge of the Raiders' 1982 move from Oakland. The NFL's relocation rules would acquire real meaning for the first time since their adoption in 1984.
- (2). *Due Process For Host Cities.*—Before relocating teams, owners would be required to give 180 days notice to their host cities. A host city would be given a meaningful opportunity to retain its team during the notice period.
- (3). *Prohibition Of Relocation Payments.*—League owners would be prohibited from sharing, directly or indirectly, in relocation payments. The \$25-30 million "fees" built into the Rams' and the Browns' relocations would be outlawed.
- (4). *Retention Of Team Names.*—Relocating teams would be restricted in their efforts to take a team name with them when they relocate. This provision would recognize a longstanding team name as a protected community asset.

It is to my understanding that the Fans Rights Act (HR 2699 and SB 1439), sponsored by Congressman Louis Stokes and Senators John Glenn and Mike DeWine, has achieved bipartisan support among the Members of Congress and contains many of solutions I have proposed. In my opinion, the Fans Rights Act would be the appropriate vehicle for addressing the issue of sports franchise relocation.

As you are aware, Congressman Martin Hoke has introduced legislation, HR 2470, which would require forced expansion of the National Football League in communities that have not shown either economic or fan support. This legislation could unfairly compel the National Football League—and potentially other sports leagues—to retain economically unviable ventures in cities. This illogical, anti-competitive legislation could ultimately doom major league sports and the attendant economic benefits. Such an approach flies directly in the face of the private-public partnerships that both political parties have championed for the last two decades.

There is no question that the system needs fixing, and the City of Cleveland is supportive of legislation that will correct the problems. The Fans Rights Act is designed to resolve the issues surrounding sports franchise relocation in a rational, thoughtful manner that is fair to all parties involved. This is to be contrasted with Congressman Hoke's notion of a government imposed expansion of the League with its attendant unreasonable economic demands on the National Football League—demands which are not placed on any other business—and then unrealistically expects the League to survive as an economic entity. The Fans Rights Act is a far superior vehicle to address the need for franchise stability without running the unwarranted risk of destabilizing the entire industry.

The opinions I have shared with you were derived from the observations I made from both the Browns' experience and in my participation in the Sports Franchise Task Force sponsored by the U.S. Conference of Mayors. The need for the *right* solution to unchecked franchise free-agency has become a compelling national issue. Again, I thank you for giving me the opportunity to express my thoughts regarding this very important matter that is currently confronting many major cities throughout the country.

TABLE I—Useful Lives of Stadia

Decade	Name	City	Opening Date	Closing Date	Years of Useful Life
Prior to 1900	Sportmans' Park	St. Louis	1876	1966	91
	League Parks	Cleveland	1891	1946	56
	Polo Grounds	New York	1891	1963	73
Average Years of Useful Life 73					
1900-1909	Shibe Park	Philadelphia	1909	1970	62

TABLE I—Useful Lives of Stadia—Continued

Decade	Name	City	Opening Date	Closing Date	Years of Useful Life
Average Years of Useful Life 62					
1910-1919	Forbes Field	Pittsburgh	1910	1970	61
	Comiskey Park	Chicago	1910	1991	82
	Griffith Stadium	Washington	1910	1965	56
	Fenway Park	Boston	1912	open	84+
	Tiger Stadium	Detroit	1912	open	84+
	Crosley Field	Cincinnati	1912	1970	59
	Ebbet's Field	Brooklyn	1913	1957	45
Braves Field	Boston	1915	1952	37	
Average Years of Useful Life 64					
1920-1929	Keezar Stadium	San Francisco	1921	1970	50
	Los Angeles Coliseum	Los Angeles	1923	1994	72
	Yankee Stadium	New York	1923	open	73+
	Soldier Field	Chicago	1926	open	70+
Average Years of Useful Life 66+					
1930-1939	Cleveland Stadium	Cleveland	1931	open	65+
	War Memorial Stadium	Buffalo	1936	1972	37
	Orange Bowl	Miami	1938	open	58+
Average Years of Useful Life 53+					
1940-1949	Mile High Stadium	Denver	1948	open	48+
	Memorial Stadium	Baltimore	1944	open	52+
Average Years of Useful Life 50+					
1950-1959	County Stadium	Milwaukee	1953	open	43+
	Metropolitan Stadium	Minneapolis	1956	1981	36
	Lambeau Field	Green Bay	1957	open	39+
Average Years of Useful Life 40+					
1960-1969	Candlestick Park	San Francisco	1960	open	36+
	Dodger Stadium	Los Angeles	1962	open	34+
	RFK Stadium	Washington (D.C.)	1962	open	34+
	Shea Stadium	New York	1964	open	32+
	Astrodome	Houston	1965	open	31+
	Atlanta-Fulton County	Atlanta	1966	1996	31
	Busch Memorial	St. Louis	1966	open	30+
	Oakland-Alameda Coliseum	Oakland	1968	open	28+
	Anaheim Stadium	Los Angeles	1966	open	30+
	Tampa Stadium	Tampa	1967	open	29+
	Jack Murphy Stadium	San Diego	1967	open	29+
Sun Devil Stadium	Phoenix				
Average Years of Useful Life					
1970-1979	Arlington Stadium	Arlington	1970	1993	24
	Riverfront Stadium	Cincinnati	1970	open*	26+
	Three-Rivers Stadium	Pittsburgh	1970	open	26+
	Texas Stadium	Dallas	1971	open	25+
	Foxboro Stadium	Boston	1971	open	25+
	Veterans Stadium	Philadelphia	1971	open	25+
	Arrowhead Stadium	Kansas City	1972	open	24+
	Royals Stadium	Kansas City	1973	open	23+
	Rich Stadium	Buffalo	1973	open	23+
	Exhibition Stadium	Toronto	1974	1989	16

TABLE I—Useful Lives of Stadia—Continued

Decade	Name	City	Opening Date	Closing Date	Years of Useful Life
	Superdome	New Orleans	1975	open	21+
	Pontiac Silverdome	Detroit	1975	open	21+
	Meadowlands	New Jersey	1976	open	20+
	Kingdome	Seattle	1977	open*	19+
	Olympic Stadium	Montreal	1977	open	19+
Average Years of Useful Life					
1980-1989	HHH Metrodome	Minneapolis	1982	open	14+
	Hoosier Dome	Indianapolis	1984	open	12+
	Joe Robbie Stadium	Miami	1987	open	9+
Average Years of Useful Life					
1990-1999	Skydome	Toronto	1989	open	7+
	New Comiskey Park	Chicago	1991	open	5+
	Oriole Park	Baltimore	1992	open	4+
	Georgia Dome	Atlanta	1993	open	3+
	Jacobs Field	Cleveland	1994	open	2+
	Ballpark at Arlington	Arlington	1994	open	2+
	Coors Field	Denver	1995	open	1+
	Gator Bowl	Jacksonville	1995	open	1+
	St. Louis Dome	St. Louis	1995	open	1+
Average Years of Useful Life					

*Tenants have requested a new facility.

PREPARED STATEMENT OF HON. LOUIS STOKES, A REPRESENTATIVE IN CONGRESS
FROM THE STATE OF OHIO

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to discuss the challenges facing the future of professional sports. As a Representative of the 11th Congressional District in Cleveland, Ohio, I represent thousands of avid sports fans who have a keen interest in the future of professional sports. My constituents' interest in this important issue was brought to national attention when they were faced with the abrupt and unjustified attempt by the Cleveland Browns owner, Art Modell, to move the team away from Cleveland—its home for over 50 years.

Mr. Chairman, as a result of the Cleveland Browns case, I have introduced H.R. 2699, the Fans Rights Act. Three primary provisions of this legislation are designed to encourage professional sports leagues to operate with policies that promote stability. In addition, the bill will foster the equitable resolution of disputes arising from the proposed relocation of professional sports teams.

First—the fans rights act provides a narrowly tailored antitrust exemption shielding professional sports leagues from antitrust liability for blocking a team relocation. Leagues would be required by law to base relocation decisions on set criteria that take into account fan loyalty, community support and bona fide offers to purchase a team and retain it in the existing community. This criteria is largely based upon the current guidelines used by the professional sports leagues. Second—the bill requires teams that intend to relocate to give a community 180 days notice. During that time, the league would be required to hold public hearings on the proposed relocation. Third—my legislation includes a fair play provision prohibiting an owner who intends to relocate from paying so-called "relocation fees" to a league that is about to vote on the proposed move.

Mr. Chairman, H.R. 2740, the legislation proposed by my colleague Martin Hoke differs from my legislation in one distinct way. Rep. Hoke's bill mandates forced sports franchise relocation. This unprecedented federalization of business formation and location is too extreme. While my legislation primarily removes government barriers to the reasonable resolution of these disputes, H.R. 2740 places the federal government in the middle of what is predominately a private decision. The problems associated with sports franchise relocation needs fine tuning not heavy handed tactics.

The subject of forced expansion was discussed in great detail during the United States Conference of Mayors annual winter meeting. The Task Force on Sports Franchise Relocation appointed by the Mayor of Seattle included the Mayors of Cleveland, Houston, Green Bay, Cincinnati, Tampa Bay, Pontiac, Michigan, Minneapolis, Chicago and Pittsburgh, after hearing Rep. Hoke's presentation, forced expansion was rejected by the task force and was not included in the Conference of Mayors policy resolution.

The committee may be interested to know that my legislation contains many of the provisions supported by the task force resolution. In a May 2, 1996 letter, addressed to Chairman Bliley, Mayor Michael White of Cleveland stated that H.R. 2699 would be the appropriate vehicle for addressing the issues of franchise relocation.

Mr. Chairman, last month the Fans Rights Act was offered as a substitute for Rep. Hoke's bill during the House Judiciary Committee mark-up. The committee defeated that measure by a narrow 15 to 13 vote. This support for H.R. 2699 reflects the bipartisan support my bill enjoys in the House. In fact, the companion measure in the Senate, S. 1439, is co-sponsored by both of Ohio's Senators. One Republican and one Democrat.

The balanced and practical approach in the Fans Rights Act to this longstanding problem will help ensure that reason prevails in the determination of when a professional sports franchise may relocate. This non-regulatory, minimally intrusive approach that incorporates the vital interests of all parties will certainly provide greater protection for the citizens and loyal sports fans of America. I look forward to working with you on this matter and again thank you for the opportunity to testify on my legislation. Thank you.

CITY OF CLEVELAND,
CLEVELAND CITY HALL,
April 25, 1996.

The Honorable JOHN CONYERS,
U.S. House of Representatives,
Committee on the Judiciary,
2426 RHOB, Washington, D.C. 20515-2214.

DEAR CONGRESSMAN CONYERS: Congressman Hoke's statement that the NFL deal in Cleveland was negotiated under duress is a patent and unadulterated lie.

Sincerely,

MICHAEL R. WHITE,
Mayor.

PREPARED STATEMENT OF HON. JOHN GLENN, A U.S. SENATOR FROM THE STATE OF OHIO

Mr. Chairman and Members of the Subcommittee, thank you holding this hearing and giving me this opportunity to address the serious problem of sports franchise relocation. I'm sorry I cannot deliver this testimony in person, but I thank Representative Dingell for entering it into the record.

As you know, last year, my friend and colleague Representative Stokes and I, drafted and introduced the "Fans Rights Act." We authored the "Fans Rights Act" because American sports fan have had enough of rampant franchise relocation. It harms the communities which host sports teams. It harms the games—the basis of professional sports—and their important place in American society and history. But most of all, unchecked team relocation harms the fans, especially because they have little or no voice in the process.

Obviously, the Cleveland Browns situation hit us the hardest. As a native Ohioan, a longtime Browns supporter, and, most of all, an American sports fan, I was shocked and saddened by the Browns' relocation to Baltimore. I have the highest praise for my friend, Mike White, the Mayor of Cleveland, and the deal he negotiated to ensure football—Browns football—will return to Cleveland. But it saddens me that the sports fans and city of Cleveland were even put in this position.

Yet, Mr. Chairman, sports team relocations are at an all-time high, especially in the National Football League. The Browns have gone and are now the Baltimore Ravens. The Oilers have been okayed to move to Nashville. The Seahawks have threatened to head south and play in the Rose Bowl. Last year we saw the Rams move to St. Louis and the Raiders return to Oakland. Teams from Chicago to Arizona to Tampa Bay are rumored to be packing up and heading for a new town. In baseball, the Pirates, Astros and Mariners have been reported as candidates for relocation in the past year. The Winnipeg Jets of the NHL are moving to Phoenix.

It's time that fans, communities and leagues—as opposed to individual owners—begin to have more of a say in the future of their sports franchises. Professional sports teams are an important part of a city's economy. They have helped local communities rally and revitalize inner cities and create new sectors of economic opportunity. And, professional sports teams are an immeasurable asset to civic pride and spirit.

For these, and many other reasons, Congress has an important role to play in finding a solution to the franchise relocation problem. And, I think the best course of action would be for Congress to pass the "Fans Rights Act" (S. 1439 and H.R. 2699). I've included a fact sheet with my testimony this morning for the Subcommittee's record.

First, however, let me make a few comments about the bill before the subcommittee today, H.R. 2740, which causes far more problems for professional sports than it solves. While there are many similarities between the "Fans Rights Act" and the bill offered by Representative Hoke, there is a key difference.

H.R. 2740 would force leagues, under certain circumstances to give expansion franchises to cities which have lost a team due to relocation. While well intended, this proposal would be a mistake for professional sports for a variety of reasons.

A league takes many factors into consideration when it decides to expand. Chief among those is the economics and the viability of moving into a certain market. But under H.R. 2740, situations could arise where a league is forced to expand into a market that might not be economically viable, but does meet the criteria of the bill. There may be an investor willing to take a chance to put the money out for a team, but that does not necessarily mean the fan support, the community support, will carry that team financially. What happens if the franchise goes under? That would only serve to put the community, the fans and the league in a deep hole.

Considering the unique partnership that exists among team owners in a sports league, the concept of forced expansion would require leagues to make decisions that are not in their best business interest. This goes against the American idea of free markets.

What sort of precedent does this set? If Chevrolet closes a factory, should we then require Ford to open up a plant in that very same city? While we have tried to pass measures—notably the plant closing notification law and other economic incentives—to help lessen the impact of such closings, I do not think Congress should pass a law that would go this far. Yet, that's exactly what the bill before the Committee proposes to do for professional sports.

Another factor that H.R. 2740 does not address is that leagues must consider whether or not the talent pool of athletes will support expansion. It makes no sense to force learn to expand when the talent may not be there to keep the teams and the game competitive—that's unfair to the ticket-buying public.

Why open a new supermarket if you can't stock the shelves or have to put inferior products out? Yet, that's exactly what this legislation would require sports leagues to do.

The reason we're trying to address the relocation problem is to help the fans. But putting a league in financial trouble and watering down the high-level of play isn't very fan-friendly.

I find the forced expansion provision of H.R. 2740 to not only be anti-business, but it goes against efforts in the past few years to be rid of the Washington "one-size-fits-all" approach to regulating businesses, states and local governments. It's very strange that many of the same people in Congress who have been the uncompromising advocates for slashing federal regulations and mandates—regardless of their worth—are the same people who support this bill.

However, Mr. Chairman, there is a more rational and reasonable solution to the relocation problem: the "Fans Rights Act." Our legislation offers sports leagues the opportunity to make relocation decisions without the threat of costly and time-consuming lawsuits. It also gives the fans and communities affected by a relocation the opportunity to play a part in this decision. I'd like to make a few points about our legislation.

First, in regards to our provision that would grant a limited anti-trust exemption to sports leagues in relation to franchise relocation. Let me stress that this exemption is very narrowly drawn and would only come into play if a league, following the strict guidelines of our bill, votes against a team's relocation. Simply, this gives a league the ability to enforce its own rules.

Some may argue that this exemption is not necessary and leagues can already block a move. But the infamous *Raiders* case has created a great deal of confusion. The NFL lost an antitrust case—to the tune of \$50 million—brought by the Raiders because the league rejected its move. This has created a situation that when a team wants to move, the owners in a league are not going to risk another lawsuit and

will approve such a relocation. The narrow anti-trust exemption granted by our bill is needed to correct this situation.

But our bill is called the "Fans Rights Act" because it doesn't just give the leagues this exemption. We drafted very specific procedures leagues and teams must follow in the event of a proposed relocation. This includes a 180-day notice of a relocation so that alternative offers can be prepared to keep the team in its present community. The bill has a requirement that any bona fide offer must be considered by the league. The legislation also directs the league to take a number of factors—including fan loyalty and community support—into consideration when deciding to approve a move. Finally, the bill includes a fair play provision prohibiting an owner who wants to relocate from paying a so-called "relocation fee" to a league that is about to vote on the proposed move.

As I've said many times before, the "Fans Rights Act" is not anti-owners, anti-sports, or anti-business. Our legislation will not prevent owners from making a profit on their investment. It would not even bar owners from moving their teams to other locations if there are legitimate reasons for doing so. Also, our legislation will not force a sports league to make a decision that might not be in its best business interest. I just do not believe that Congress should tie the hands of the owners or leagues so they are restricted in acting in their best business interests.

Yet, the "Fans Rights Act" doesn't give a free ride to the sports leagues. The bill places very rigid requirements on sports leagues and how they decide relocations. The bill also lifts the cloud the *Raiders* case has cast over how a league decides to approve or disapprove relocations. It gives the fans and communities the chance to be a part of this process.

I urge the Subcommittee and the full Committee to look at these two bills and think which would be in the best interest of America's sports fans. American sports fans want a solution to the relocation problem. American sports fans, however, don't want this solution to come at the expense of league financial stability and a high-level of professional play. The "Fans Rights Act" accomplishes the first, but not at the expense of the second.

Mr. Chairman, thank you again for holding this hearing. I look forward to working with you and the members of the Subcommittee on this issue.

Mr. STUPAK. Mr. Chairman, if I may, could I ask for additional time to let Mr. Hoke read that letter that I want to get in the record?

Mr. OXLEY. Yes.

Mr. HOKE. Could you repeat the question, please?

Mr. STUPAK. Sure. You quoted the testimony of Mr. Rozelle back in 1966 in support of your position. You have left us with the distinct impression that Mr. Rozelle's testimony in 1966 supports your bill. When you take a look at the letter and all the other things, it does just the opposite.

Mr. HOKE. I'll be happy to answer your question. First of all, I don't think I've quoted Mr. Rozelle to create the impression that he supports my bill. I would expect Mr. Rozelle to write a letter just exactly like the one he did.

What I'm suggesting is there were promises, representations made in 1966 that were very clear when Mr. Rozelle testified before the Congress, and basically what he said is that with this legislation, every franchise will remain in its present location. Those are his words in 1966. Amazingly, a man named George Meder, who was a member from Michigan at the time, was sitting on the Judiciary Committee and he said to Mr. Rozelle, he said, "You are now asking for an exemption from the antitrust laws from Congress, you are asking us to place a rather large amount of power in your football league which you say you will use judiciously. If there is concern that the power granted by such an exemption would be abused, I think Congress has the right to make it conditional. I am trying to find some phraseology so that we would not

have to depend upon the goodwill of the management of the professional football league."

Mr. Rozelle replies, "It would be extremely difficult to do, but as it is our intent to protect the communities and the fans," that he'd be happy to work on it.

All I'm suggesting in my correspondence, and I'm suggesting it again right now, is that what the Fan Freedom and Community Protection Act does is create the conditionality, the mechanism, that was discussed at that time making it possible for communities to protect themselves, so that the Congress doesn't get used and we don't just rely on the goodwill of the management of the professional football leagues.

Mr. STUPAK. Reclaiming my time, the NFL has kept its word in 1966 because—

Mr. OXLEY. The gentleman's time has expired.

Mr. STUPAK. If I may, for 1 minute.

Mr. OXLEY. The gentleman is recognized for an additional minute.

Mr. STUPAK. The NFL kept its word until the court ordered them to make the move, and they also kept their word by expanding in 1960, again in 1970, and most recently here. Now you want the Congress to somehow intervene in these management decisions. I think management has kept its word and we should let management continue to do its job and not be passing laws telling them how to do their job.

Mr. HOKE. If I may respond, we will agree to disagree on that. I don't think management has kept its word at all with respect to that. Clearly, they got an unfortunate result in the 1980 case, the first Raiders' case, but that Raiders' case was tried on its facts. I hope that the gentleman from Michigan has read the case.

Have you had an opportunity to read it?

Mr. STUPAK. Yes, I have.

Mr. HOKE. Then you know that Raiders I was tried prior to the leagues having a laundry list of criteria by which they could restrict team movements and that after Raiders I was appealed to the Ninth Circuit and the Ninth Circuit put the laundry list of criteria into that decision, then the NBA, the NFL and the NHL all put those criteria into their rules and by-laws, and as a result of that, they can in fact restrict team movements.

Mr. OXLEY. The gentleman's time has once again expired. I'd say to my friend from Ohio that in the National Football League, there is a 15 yard penalty for piling on. Unfortunately, there is not that kind of penalty in our subcommittee, so I emphasize with your position.

The gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman.

Mr. Hoke, I have looked pretty closely at the original bill, H.R. 2740, and then only within the last few minutes have we received a copy of the bill as reported out by the Judiciary Committee.

If your bill is passed, what is the effective date of the legislation?

Mr. HOKE. August 1, 1995.

Mr. WHITFIELD. If the Houston Oilers move to Nashville, Tennessee, then Houston would be entitled to an expansion team under this bill. Is that correct?

Mr. HOKE. No. Houston would be entitled to the opportunity for the creation of an expansion team.

Mr. WHITFIELD. If an investor came forth and was willing to meet all the requirements, then Houston would get a team?

Mr. HOKE. That's correct.

Mr. WHITFIELD. If the league did not do that, then the penalties would be what—loss of the antitrust?

Mr. HOKE. Yes, loss of the antitrust exemption for a year and there are other possible penalties.

Mr. WHITFIELD. Also loss of the antitrust exemption for the relocation team?

Mr. HOKE. That's right.

Mr. WHITFIELD. There is a third one. What was that? I forgot. It is a penalty three times the value of the Houston Oilers at the time they left Houston; is that correct?

Mr. HOKE. Yes, that's correct.

Mr. WHITFIELD. It seems to me that if this legislation were adopted, it would in effect stop any team from moving at all. Do you agree with that?

Mr. HOKE. No, I really disagree with that. I think that what it would do is it would probably require the National Football League or the other leagues to re-think their expansion plans.

What it really does is it balances out the incentives. Right now, all of the incentives are to move, to play franchise free agency, and to hopscotch around the country in search of a bigger deal.

What this would do is balance that incentive so that on the other side of it, owners would also be thinking about the fact that they would be expanding their league. All it does is create some balance. All it does is give communities that chance, and it will absolutely be just as important to Nashville, Tennessee as it is to Houston, Texas and Cleveland, Ohio and Seattle.

Mr. WHITFIELD. Let me ask you and Mrs. Jackson-Lee, why would you adopt a bill that would prevent the Cleveland Browns from leaving Cleveland, for example, but not the Cleveland Indians, and the Houston Oilers from leaving Houston but not the Houston Astros?

Mr. HOKE. I'll be happy to answer that first and then defer. As you know, Major League Baseball enjoys a very unique and unusual place in both American history and particularly American legal history. It was granted in a decision by Oliver Wendell Holmes, a special blanket antitrust exemption back in 1922. Mr. White probably knows better. He is an antitrust lawyer.

It's an unusual case. It's an unusual decision. It's an unusual treatment of a league. After consultation with the chairman of the Judiciary Committee, we decided that because of that, baseball should not be dealt with in this bill and that those unique circumstances made it appropriate to not include it in this bill.

Mr. WHITFIELD. Ms. Jackson-Lee?

Ms. JACKSON-LEE. I thank the gentleman. I'll be very brief. I think the uniqueness of this legislation is the fact that it is focused on very current and very obvious fact situations. I associate myself with the remarks of Mr. Hoke with respect to the unique antitrust exemption for baseball teams. Might I add also that you find them certainly more numerous than you would find the NFL franchises

and as well, the recent data suggests the greater hardship that has been placed on many of our local jurisdictions dealing with a particularly small group of potential franchises.

We are trying simply to remedy a very obvious and conspicuous problem and that is for those teams relocating with such a parity of access to those teams.

Mr. WHITFIELD. I'm not convinced myself that the differences in the antitrust immunity is all that great. The way they came about may be different, but I'm not convinced that they are dissimilar.

Second of all, you both have talked a lot about local communities providing funding to help build stadiums and so forth. Local communities and States do that for all kinds of businesses and manufacturers. Why should we single out a particular sport and make the rules different for them as far as reimbursement?

If there is a contract between a city and the local community and the owners, they can pursue civil damages for breach of contract.

Mr. HOKE. The real reason again is that we are up to our necks in Federal regulations of these professional sports leagues. It is completely appropriate that we would do this.

Mr. WHITFIELD. I don't know this for a fact but I've been told that every city that had a National Football League 30 years ago, and there may be 1 or 2 exceptions, has one today. What's the big deal—

Mr. HOKE. Cleveland doesn't and Los Angeles doesn't and Houston won't. There are three.

Mr. WHITFIELD. One is going to Los Angeles.

Mr. HOKE. New York City?

Mr. WHITFIELD. One is going to Los Angeles.

Mr. OXLEY. The gentleman's time has expired.

Mr. HOKE. Or maybe the Seattle Seahawks?

Mr. OXLEY. The gentleman's time has expired. The gentleman from Tennessee, Mr. Gordon.

Mr. GORDON. Mr. Chairman, I'd like to engage some more on some points that have been raised, but I think probably one of my best contributions to this debate is to bridle my questions so that we can move onto this second and third panel that have been here patiently.

Let me say to Mr. Hoke that I've known you since you have been here. I consider you a friend. I certainly have no quorums about you representing your constituents in the best way that you think you have, and to my friends from Houston, I know that you don't consider this a get Nashville bill, but the impact in the short term is that it will only affect Nashville and that Nashville is going to be put into a situation where either they have a \$300 million stadium and no tenant or they don't build a \$300 million stadium and have no tenant to seek.

It's a difficult situation. I understand again, interest for constituents, and would hope that as my friend from Tennessee, Mr. Bryant, tried to do in Judiciary, that there is a good compromise and that is the Stokes' bill, which is a bipartisan bill, that has the support of both the Republican and Democratic Senators from Ohio, as well as the Mayor of Cleveland, and would hope that this committee at another time have the opportunity maybe to address that bill.

Mr. HOKE. Could I very briefly respond to just the situation with Nashville? I agree that maybe in the short term, this is bad for Nashville, but not for the reasons that you think. If it is bad for Nashville, it is because the National Football League is either—I don't know if the word is "intimidating"—but it is their demand.

The fact is that Mr. Adams' team can go to Nashville and another team can be created for Houston. Nashville is the 32nd largest market in this country. Houston is the fourth largest market in this country. There is no reason that there couldn't be one in both.

I guess what I would suggest to you is that I think maybe your conclusion is correct but if it is correct, it is not because of this law or because of Cleveland or Houston or anybody else. It is because of the National Football League.

Mr. OXLEY. The gentleman's time has expired.

Mr. GORDON. Real quickly. Nashville had the free market option of negotiating and having a contract that would require them to stay a 30 year period. Other communities have that same option. I think we saw that in that situation, we had a mayor that did a good job negotiating and the free market took care of it.

Mr. HOKE. I just hope you can enforce it. We weren't able to enforce it in Cleveland.

Mr. OXLEY. Would the gentleman yield back?

Mr. GORDON. Yes.

Mr. OXLEY. The gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman. I actually had my opportunity to ask my questions before so I don't have any other questions.

Mr. OXLEY. The gentleman from Iowa, Dr. Ganske.

Mr. GANSKE. Thank you, Mr. Chairman. I'll be brief.

I'd like to ask Mr. Hoke one question. It seems to me that the National Leagues are interested in trying to keep the teams in the towns where they have built up strong fan support, the Cleveland Browns and other examples.

Then they run into the legal situation where they get sued if they try to block the movement. Your solution is then to require an expansion, to allow the team to move, the owner to have the right to take his property and move it where he wants. This is what the courts have determined. Then, your solution is to require the league to create an expansion team in the same locality.

Various representatives of these Leagues will probably offer a different suggestion or solution to this, and that would be an expansion of antitrust, so that they would have more leeway to prevent those teams from leaving in the first place.

I worry about expansion of antitrust limitations. I'd like your thoughts on this.

Mr. HOKE. Basically, in the bill, in H.R. 2740, we "expand" the antitrust exemption, if that's what you call it. But what we really do is codify Raiders I, Raiders II and Clippers, and we say that in fact, as a matter of Federal law, leagues may restrict the movement of their teams.

I don't have a problem with doing that as long as we have this other condition in the bill, and that's the opportunity to create an

expansion team under pretty tough circumstances with financial conditions.

That's really the insurance policy. There is really not much point in arguing about whether that ability exists today. I'm convinced it does. Numerous law review articles are convinced that it does. We are codifying it. We make it black letter law right in this bill, H.R. 2740.

It doesn't say to people that the league has to allow a team to stay. It doesn't force them to keep a team from moving. I don't want to force the league. If they want to let somebody move, that's okay, too. If they do and they don't enforce their own rules, then it seems to me that the community that has supported this team, if they meet this market test, they ought to have the right to a team.

Ms. JACKSON-LEE. Might I respond?

Mr. GANSKE. Yes, I'd like both of the other Members of Congress to respond.

Ms. JACKSON-LEE. I'll be brief. Let me answer that question and also to my colleague who offered to say that there is a certain amount of contribution made to businesses, of which you either try to allure or to try and keep. I would assume he is talking about in the form of tax abatements. I certainly acknowledge that. We have done that in Houston and I'm sure we have done it in other cities.

The tax abatement does not comport with the actual building of facilities. In most instances, it is a tax abatement over a period of time. In the instance of an NFL franchise, it is a large lump sum of either building a brand new stadium or maintaining one with very high dollars.

To the gentleman's question, let me say that you have something that is very much a key aspect of the marketplace in terms of keeping a team or in terms of being able to lure an expansion team in this legislation, and that is the adequacy of current facilities or you being able to represent that you are in fact a community that can support that business.

The business is not required to take a sacrifice by coming to your community. We are not doing that. We are not negating the market factors. You have to meet a criteria that says to that business, you are not sacrificing by either being lured here or with the decision to stay in that particular community.

Mr. GANSKE. Mr. Bryant?

Mr. BRYANT. If I might comment. I have been kind of quiet lately. This bill, I think, goes too far, when my colleague from Ohio says it sort of evens things out and balances things out. It doesn't. It attempts to give the cities their cake and eat it at the same time. It allows, establishes, codifies that criteria of 10 very good issues that the league has to consider in approving the location, relocation. It provides public notice, opportunity to come in, the public to come in and comment on this. You have to publish the results, based on these 10 criteria, why you have decided to make the move.

You go through all that procedural due process and then if the league does vote to relocate, after all that, then they have to come in and put an expansion team in there.

You know, why do you do all that? It goes too far to protect the cities. The cities have their protection when they contract with the owner. They go out and build this infrastructure. They get an appropriate lease that cannot be broken that has sufficient provisions for damages in there, like they would in any other private sector situation to protect themselves.

Mr. OXLEY. The gentleman's time has expired.

Mr. BRYANT. It goes too far and I think my procedure, if I might just have one more minute, where we have the other remedy, that if you go through this due process in Mr. Hoke's bill and you are not satisfied something was done correctly, you can go to court, a neutral court, in an expeditious hearing, expedited hearing, and get a decision there, rather than the government forcing them to put a team there.

Mr. OXLEY. The gentleman's time has expired. The gentleman from Ohio, Mr. Brown.

Mr. BROWN. Thank you, Mr. Chairman. I just have one question for Congressman Hoke. About a dozen years ago in Lorraine, Ohio and your home town, New York Yankee owner, George Steinbrenner, first locked out and then laid off hundreds of workers and then shut down a shipyard that located in the north side of Lorraine. Two thousand people lost their jobs. You know what else it did to the community, obviously what it did to people, they put their homes up for sale, lots of people actually at that time in Lorraine moved to Houston, interestingly enough. Fortunately, many have come back since. Nonetheless, what happened with restaurants and retail operations and families and homes and all of that.

Would it be reasonable in light of this legislation you are proposing to extend the provisions offered in this bill to these workers in retrospect, or other workers who have lost jobs due to NAFTA, due to GATT, due to corporate down sizing?

Mr. HOKE. As you know, I opposed the NAFTA agreement. I wonder which particular provisions you are talking about in the bill. If you could tell me, then I could tell you. There are a lot of provisions, the antitrust exemption or an opportunity to buy another ship building company. I'm not sure exactly how you would apply these provisions.

Mr. BROWN. I think the provisions of—

Mr. HOKE. The 180 day notice?

Mr. BROWN. Longer notice than this plant closing law that is now in effect in this country.

Mr. HOKE. I don't know. Maybe a notice provision would be appropriate. I do know there is a very important distinction. I'm just being candid with you. I am not prepared to talk about a hypothetical bill that relates to a plant closing issue. And, by the way I am not sure when that happened.

Mr. BROWN. 1982.

Mr. HOKE. George Steinbrenner's American Shipbuilding was not given a Federal antitrust exemption. That really is the distinction here. Whether or not we should be doing something with respect to that particular situation, either now or then or in the future, really is apart from and distinct from the situation where we are

trying to deal with an industry, in this case, professional sports, that was given a specific antitrust exemption by the Congress.

That's really the reason d'etre of this bill. If we hadn't been involved in 1961 and 1966, then we would have absolutely no right whatsoever to be talking about this now.

That isn't the case. The case is clearly that Congress dealt with this then and certain representations were made, and that is what we are trying to do. We are just trying to give a little bit of negotiating power to the communities that are being exploited and taken advantage of.

Mr. BROWN. I accept that answer. I just find it interesting that this Congress is putting in a very much self declared free market this kind of time and effort in attracting the kind of interest in this kind of issue which is obviously important to northeast Ohio and important to Texas and important to Tennessee, but at the same time, as Art Modell took his team and ran, Rite-Aid tried to buy Revco, people were going to lose their jobs in northeast Ohio, there was not action taken by Congress or hearings to do anything about that, although the FTC did step in ultimately in that issue.

There just doesn't seem to be the interest in this body in protecting those middle class jobs that are really the life blood of northeast Ohio and in Mr. Manton's district and in Mr. Gordon's district and all over this country, the kind of effort being put in to helping people and government involvement when necessary in those kinds of cases.

It troubles me a bit that day after day after day, we have talked about this and so little about the corporate down sizing when AT&T lays off 40,000 people and gives huge golden parachutes to a handful of executives and makes them multi, multi-millionaires.

It seems to me there is no justice in that. I just think that Congress' priorities are sometimes a little bit off.

I yield back the balance of my time.

Mr. HOKE. Could I respond? The only thing I'd like to point out is that I think this legislation does exactly that. I think that this legislation actually empowers communities. It empowers taxpayers, so that they can't be taken advantage of. It doesn't solve all the problems that you are talking about but it clearly goes to this issue of prioritization and of being taken advantage of.

It truly does protect those who are not being protected right now.

Mr. OXLEY. The Chair wants to thank all of our member witnesses for a most enlightening and rather lengthy process. We really appreciate your taking the time to be with us today.

Mr. MANTON. Mr. Chairman?

Mr. OXLEY. The gentleman from New York.

Mr. MANTON. Mr. Chairman, I'd like unanimous consent to enter a letter into the record, in view of some of the testimony, as to how the NFL deal in Cleveland came about, without necessarily commenting on the validity or the truth of the letter. I would simply like to ask for unanimous consent. It is one paragraph. I will take the liberty of reading the paragraph.

Mr. OXLEY. The Chair would object at this point. The letter is part of the record, as I understand it, with the Judiciary Committee. I don't think it is appropriate at this point.

We thank the members' panel.

Ms. JACKSON-LEE. Mr. Chairman, as I leave, may I just officially welcome the Mayor of my city, Bob Lanier, to this hearing, and thank him for his presence and his presentation.

Mr. OXLEY. Thank you.

Ms. JACKSON-LEE. Thank you.

Mr. OXLEY. We will now call our next panel, which has been waiting patiently. As the committee welcomes its next panel, I'd like to just introduce them. The Honorable Bob Lanier, Mayor of the city of Houston, who has been introduced by Ms. Jackson-Lee; Mr. Paul Tagliabue, Commissioner of the National Football League; Mr. Gary Bettman, Commissioner of the National Hockey League; the Honorable Philip N. Bredesen, Mayor of the city of Nashville; and the Honorable Jane Hague, Chairwoman from King County Council, Seattle, Washington.

Before we begin the testimony, let me recognize our friend from Tennessee for purposes of an introduction.

Mr. GORDON. Mr. Chairman, I represent 13 counties in the middle Tennessee area, the entire counties, and I represent a small part of the 14th county, and that is Davidson County, which is the home of Metro Nashville.

We have a Mayor there that has a distinction we would all like to have, and that is in his last election, he received more votes than any mayor in history. I'm looking for that one this coming time.

The senior partner or at least the majority partner in the representation of Davidson County is Bob Clement, if I could take a moment to introduce Bob, to introduce our Mayor.

Mr. WHITE. Mr. Chairman, I've been asked by our fellow member, the Honorable Bill Paxon, to extend a special welcome to Commissioner Gary Bettman of the National Hockey League. As you know, he is the elected first commissioner in the 78 year history of the league.

Mr. OXLEY. The gentleman from Tennessee and my neighbor down the hall.

**STATEMENT OF HON. BOB CLEMENT, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF TENNESSEE**

Mr. CLEMENT. Mr. Chairman, I want you to know some of your cohorts were with me after they were with you last night, since Johnny Cash was having a concert here. It went well, I assure you.

Thank you, Congressman Gordon and all of you. This has been a lengthy hearing today but a very necessary hearing. As all of you know, I represent Nashville, Tennessee and I'm proud of the fact that after a lot of hard work, that the Houston Oilers are coming to Nashville.

I will say to Mr. Hoke and the Hoke bill, I consider that nothing but a private bill. I consider it a protectionist bill. I surely don't think it's in the public's interest. I do know he pointed the finger or implied to Congressman Gordon earlier about the fact that it had nothing to do with Nashville, it's not interfering with Nashville.

The fact is that the effective date of his bill, August 1995, does affect Nashville, and he knows that and he was asked by me and others to change the effective date and he refused. He also knows

the city of Houston has hired, which they had every right to, a very high priced law firm to represent their interests.

I don't know why Mr. Hoke feels like that he had to make some, I think, unnecessary allegations and charges concerning the Mayor of Cleveland, that he has done an exemplary job representing the people's interest, to ensure that they do have a team for the future.

Therefore, private enterprise does work. It didn't need a Federal Government mandate in order to get a team. It was able to get a team by showing enthusiasm and showing fervor and showing emotion. That is how Cleveland got that team. I think that is the best way for it to work.

Mayor Bredesen is here today. I am to introduce him. Mayor Bredesen is our Mayor of Nashville and just as Congressman Gordon has said, has been an outstanding Mayor for Nashville.

He has been successful in a lot of different fronts and he has brought about downtown revitalization. He has brought about more funding for education, more parks, more concern for the environment. One of the lowest if not the lowest unemployment rate we have ever experienced.

We have tough new ethics and fiscal responsibility policies for the city and truly a reorganization of our city services. He is a very successful businessman, a founder and CEO of Health America Corporation, which is on the New York Stock Exchange, has over 6,000 employees. He is also the founder and former Chairman of Coventry Corporation, a Nashville based public company in the same business.

Mr. Bredesen is a 1967 graduate of Harvard. At this time, I introduce our Mayor of Nashville, Mayor Phil Bredesen.

Mr. OXLEY. Thank you, my friend from Tennessee. I know my friend from Tennessee has a great interest in football, and I can't resist the opportunity for you to share with the committee the history of your football team when you were the President of that particular college that I believe shares an unique record in football history. I wonder if you could share that with the committee.

Mr. CLEMENT. Mr. Chairman, and I will do that quickly as well. I'm former President of Cumberland University and as the chairman said, we hold the distinction of being defeated worse in football than any other school in America. My school is in the Guinness Book of Records.

Cumberland University played Georgia Tech and the final score was Cumberland-0, Georgia Tech-222. Our greatest gain in the game was a five yard loss. There is a book written about that game. It is called "You Drop It, You Pick It Up," because one of the Cumberland players dropped the ball, the other Cumberland player said, pick it up, pick it up. The other Cumberland player said, you dropped it, you pick it up.

It was during 1916, during World War I. We lost a lot of our players because of World War I. They ended up at Georgia Tech. That letter that was sent to Cumberland was diverted from the Administration to the ASA fraternity. They are the ones that signed the contract because they wanted to play football in Atlanta because it was free food, free travel and free good time.

Thank you, Mr. Chairman.

Mr. OXLEY. Thank you. I am glad you shared that recollection with the committee.

Let me then begin with Mayor Bredeesen and welcome. We are glad to have you with the committee this afternoon.

STATEMENTS OF PHILIP N. BREDESEN, MAYOR, NASHVILLE, TN.; PAUL TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE; GARY B. BETTMAN, COMMISSIONER, NATIONAL HOCKEY LEAGUE; BOB LANIER, MAYOR, HOUSTON, TX.; AND JANE HAGUE, CHAIRWOMAN, KING COUNTY COUNCIL, SEATTLE, WA.

Mr. BREDESEN. Thank you. First of all, thank you for the opportunity and invitation to testify today. I want to speak simply from the perspective of one city, Nashville, which is seeking to establish an NFL team in our community.

I also come to you with the perspective of a businessman who has taken three companies public and who has a deep respect for the importance of the free market and the power of competition to make things work well.

Nashville's situation is this. Following 2 years of unsuccessful negotiations with Houston, the owner of the Oilers approached us. We have in the past year negotiated a relocation agreement with them, have obtained the necessary private, State and local financing to build a stadium, and have obtained NFL approval for the move, subject only to there being no punitive legislation, and specifically that means the forced expansion legislation enacted in this Congress, which would retroactively, as this particular bill we are considering does, apply to Nashville.

I would like to speak briefly to three points. First of all, just a word or two about the bill itself. Second, the subject of priorities in our city and their relationship to the effort on behalf of professional sports, and third, the subject of competition for sports franchises among cities.

The bill itself, Mr. Hoke's bill, I think there are some excellent aspects to the bill, to be honest. As Mayor of one of the cities in the fray, I would agree that there is a public interest in the Congress in setting the standards for competition among cities for Major League professional sports.

There are any number of situations where the Congress encourages vigorous competition but sets some ground rules for how that competition works, the handling of this Nation's telecommunications infrastructure, for example, is a recent, I think, highly successful example of that.

The bill that we are considering seems to directly contradict itself. On the one hand, it says to the league, if you meet all these tests, you have just shown by the standards we have set forth, stadium adequacy, fan support, all those things, that a team is justified in moving out of this city, and then it turns around on the other and says we now require you under certain circumstances to place a team back in the city.

The forced expansion provision specifically removes the element of free market competition from the process of locating professional sports teams and more importantly, it effectively removes the in-

centives which cities and fans have to support those teams and to support those teams' facilities.

With the forced expansion provision deleted, the bill seems to me anyway to be a sensible approach to protecting fans and cities without undermining the obvious benefits of the free market.

Second of all, priorities. Mr. Gillmor, I believe, and certainly Mr. Hoke, spoke eloquently about the priorities of cities and the effect of this. Certainly, there has been extensive discussion of that.

This is a legitimate concern. Our cities are consumed by some irrational frenzy to attract pro sports that skews the priorities in those cities irresponsibly. I will be honest. In Nashville's case, there are other priorities that frankly have come first.

We have added to our police force. We substantially raised salaries in the police department. We have the largest school reconstruction project in the city's history. We have made investments in indigent health care. We have added thousands of acres of park land, and with these things underway, we now desire to attract a Major League professional sports franchise. Other cities, other mayors, have come to different conclusions on that.

I submit to you that a free market and extensive public discussion of the appropriateness of these investments and the votes of elected legislative bodies and the public itself, is the smartest and soundest way to determine local spending priorities.

In Nashville, the decision to commit public funds to build a stadium was extensively discussed. We had the Governor of Tennessee review it and approve it. We had the State legislature, after consideration by multiple committees on both sides vote overwhelmingly for it, our Metropolitan Council on four occasions voted to approve the project, a public referendum was called on one portion of the financing package. It was approved 60-40 on May 7 of this year.

During the period of last Fall until the referendum last week, there was a lot of public debate; 852 newspaper articles, 326 letters to the Editor and 1,288 stories on three network television channels.

The decision to invest in pro sports in Nashville was the result of a lot of discussion and debate, subject to legislative review and ultimately submitted to the people for their concurrence, which was overwhelming.

I would suggest this is the best possible way to determine priorities in a community.

Last of all, competition. The cities in our country have always competed vigorously with one another. Norfolk and New York competed 200 years ago to be the eastern gateway. New Orleans, Memphis and Chicago to be the western gateway. We compete for industrial plants and corporate headquarters. Suburbs compete with their central cities for industry and residences. It is that competition that helps to keep cities and States healthy. It helps to keep taxes under control. It requires us to invest in infrastructure and in our workforce.

Nashville has competed vigorously, as has had many other cities. We have won some and we have lost some. We have won an NFL football team, unless you effectively reverse that result. We have lost recently an American Airlines' hub to expansion instead in

Dallas and Chicago. Not too many years ago, we lost a project that I worked very hard on, the Supercollider, to the State of Texas.

I expect that 30 years from now, when the NFL's lease is up for renewal in Nashville, there will be a vigorous competition then for that team. We will try to keep them and other cities will want them.

There was a lot of talk earlier about teams leaving in the middle of the night, the necessity of protecting public investment and so on. There is an obvious way to protect public investment, which is the existence of leases, which protect them.

We spent a great deal of time negotiating a lease with the Houston Oilers that protected the citizens of Nashville.

I guess in concluding, we are a medium sized city. We are in many ways like a small business, competing with giants. We have some advantages, maybe being a little more fleet afoot. We have some disadvantages. We certainly don't have the economic clout that big cities have. A stadium is a much bigger part of our budget.

Larger cities than Nashville have very powerful competitive tools for pro sports. They have the size of the economy, the size of their budgets, the number of major corporations, the base of fan support, the political clout.

The bottom line which I hope you will take into consideration as you consider this issue of forced expansion is just this, and that is that Houston, Texas and Los Angeles, California do not need special consideration from the U.S. Congress to compete with Nashville, Tennessee. If they choose to do it, they can do it quite well by themselves.

Thank you very much for this opportunity.

[The prepared statement of Philip Bredeesen follows:]

PREPARED STATEMENT OF PHILIP BREDESEN, MAYOR, NASHVILLE, TENNESSEE

Thank you to the members of the subcommittee for the opportunity to testify today.

I would like to speak from the perspective of being mayor of one city, Nashville, Tennessee, which is seeking to establish an NFL team in our community. I also come to you with the perspective of a businessman who has taken three companies public, and who has a deep respect for the importance of the free market and the power of competition.

Nashville's situation is this: we have in the past year negotiated a relocation arrangement with the Houston Oilers, have obtained the necessary private, state and local financing to build a stadium, and have obtained NFL approval for the move subject only to there being no punitive legislation-forced expansion legislation-enacted in this Congress.

I would like to speak briefly to three points: first, the Hoke Bill itself (HR 2740); second, priorities in our city and their relationship to the effort on behalf of pro sports; and third, the subject of competition for sports franchises among cities.

1. The Hoke Bill Itself.

There are some excellent aspects to the bill. As mayor of one of the cities in the fray, I would agree that there is a public interest in the Congress setting the standards for competition among cities for major league pro sports. There are any number of situations where the Congress encourages vigorous competition, but sets some groundrules for how the competition works; the handling of this nation's telecommunications infrastructure is a recent and highly successful example.

But the bill you have before you seems to directly contradict itself. On one hand, it says to a league, "You have just shown, by the standards we have set forth—stadium adequacy, fan support, and so on—that a team is justified in moving out of this city."

Then on the other, it says, "We now require you to place a new team in this city."

The forced expansion provision removes the element of free market competition from the process of locating professional sports teams, and effectively removes the incentives which cities and fans have to support those teams and their facilities.

However, with the forced expansion provision deleted, the bill seems to this mayor to be a sensible approach to protecting fans and cities without undermining the obvious benefits of a free market.

2. *Priorities.*

There has been extensive discussion of the appropriateness of the priorities evidenced by the construction of new sports facilities. This is a legitimate concern: Are cities consumed by some irrational frenzy to attract pro sports that skews priorities irresponsibly?

In Nashville's case, there are other priorities that have frankly come first. We have extensively added to our police force: more personnel in the last four years than in the previous twelve. We have substantially raised salaries in the police department. We have the largest school reconstruction project in the city's history, by far, underway. We have added thousands of acres of parkland in the past few years. And, with these things underway, we desire now to attract a pro sports team. Other cities, other mayors may come to different conclusions.

I would submit to you that a free market, extensive public discussion of the appropriateness of these investments and the votes of elected legislative bodies and the public itself is the soundest way to determine the spending priorities of local funds.

In Nashville, the decision to commit public funds to construct a football stadium extensively discussed and debated. After an outline of the terms with the Oilers was worked out, the following occurred:

- the Governor of Tennessee, after considerable review, indicated his support for the state's portion of the project
- the state legislature, after consideration by multiple committees of the House and Senate, and after public hearings, voted overwhelmingly to approve the project.
- the Metropolitan Council on four separate occasions over six months voted to approve the project by substantial majorities
- a public referendum was called on a portion of the financing package, and the financing package was approved 60/40 on May 8th.
- during the period from last fall until the referendum last week, there was extensive public debate on the issue. There were, for example, 852 newspaper articles in the dailies in Nashville, 326 letters to the editor, and 1288 stories on the three network television channels.

The decision to invest in pro sports in Nashville and Tennessee was the result of extensive discussion and debate, subjected to extensive legislative review, and ultimately submitted to the people for their concurrence, which was overwhelming. I would submit that this is the best possible way to determine priorities in a community.

3. *Competition.*

Cities in our nation have always competed vigorously with one another. Two hundred years ago, Norfolk and New York competed to be the eastern gateway. New Orleans, Memphis and Chicago all vied to be the jumping-off point for the railroads west. Cities compete strongly for industrial plants and corporate headquarters. Suburbs compete with their central cities for industry and residents.

This competition keeps our cities and states healthy. It helps to keep taxes under control, it requires investment in infrastructure and workforce.

Nashville has competed vigorously, as have many other cities. We have won some and lost some. We have won an NFL football team, unless you reverse that result. We have lost an American Airlines hub to expansion instead at Dallas and Chicago. Not too many years ago, we lost a project I worked very hard on, the supercollider, to Texas.

I fully expect that 30 years from now, when the NFL lease is up for renewal in Nashville, there will be a vigorous competition for the team; we will try to keep them, and other cities will want them.

Nashville is a medium-sized city. We are in many ways like a small business competing with giants. We have some advantages-perhaps being more fleet afoot; we have some disadvantages-we certainly don't have the economic clout of the big cities. A stadium is a much bigger part of our budget. *Larger cities than Nashville have very powerful competitive tools for pro sports: the size of the economy, the size of their budgets, the number of major corporations, the base of fan support, their political clout.*

The bottom line, which I hope you'll take into consideration as you consider the issue of forced expansion, is just this: *Houston, Texas and Los Angeles, California*

do not need special consideration from the U.S. Congress to compete with Nashville, Tennessee. If they choose, they can do it quite well themselves.

Thank you for the opportunity to testify today.

Mr. OXLEY. Thank you, Mayor. We now turn to the Commissioner of the National Football League, Paul Tagliabue. Commissioner, welcome.

STATEMENT OF PAUL TAGLIABUE

Mr. TAGLIABUE. Thank you, Mr. Chairman. I have submitted a statement, as you know, and I will not certainly repeat many of the things that are in my statement. We comment generally on the legal situation as to how we have arrived at this point under the antitrust laws and also we comment on some of the specific aspects of H.R. 2740.

I would say that the thing I'd like to emphasize is that when we had the clear tools as a league to deal with the location of our teams, I believe that the National Football League did so and did so very responsibly. I believe that the league has become the most popular sport in the United States in the last three decades, evolving from the late 1950's and early 1960's to where we are today, because it has acted very responsibly and served the public, the fans, the consumers, very well.

If you go back in history, and I have a chart here which I will refer to, in 1960 through 1970, there were no team moves. 1970 through 1980, there were no team moves. Those were the two decades that followed the legislation in 1961 and the legislation in 1966, to which so much reference has been made.

In the 1980's, there were three team moves. They all came at team initiation under the ruling in the Raiders' case which said that the National Football League could not, by vote of the membership, block a team move. There has been considerable discussion as to the exact sweep and scope of those court rulings, but the reality is that the team opposed the Raiders' move and was told by court order it had to permit it and it had to pay \$50 million in damages as well for having attempted to block it.

We then had a period of stability in the late 1980's, following the introduction of our criteria and our new policy guidelines for controlling team moves.

In the early 1990's, in the last several years, there have been a couple of developments which have created some instability. First was another antitrust court ruling in the player free agency case, which has dramatically escalated our player costs.

Second was the expiration of a number of leases that were signed on stadiums that protected cities and landlords for the most part for 30 years. As those leases have expired, the processes to which Mayor Bredesen referred have started to come into play.

What we have had as part of that process is an increasing need to privatize the cost of stadiums in the current environment. We are privatizing the cost of stadiums. In the Carolina's, our expansion team of the Panthers is building an \$185 million stadium entirely with private funds from within the private sector in the form of user fees. Sometimes these are condemned in rather flat rhetorical flourishes, PSL's, seat licenses.

What is it? It is a user fee to take off the backs of the taxpayers and put on the fans and the business community the cost of building stadiums.

We have some instability now for the moment. It is a product really of three things. No. 1, our ability to act as a league has been severely restricted by antitrust, punitive treble damage exposure. No. 2, our player costs are escalating beyond our revenues, especially for the teams with the more limited revenues, as a result of the player free agency court decision. No. 3, we are being faced with the need to privatize the cost of our facilities.

We are dealing with all of this, I think, very responsibly and very aggressively. We worked out an unprecedented settlement with Cleveland and Baltimore, which does involve \$50 million potentially of private investment in the stadium. It is a loan but not to the public sector. It is a loan made by the league as a bridge loan on behalf of whatever owner will own the team in Cleveland. The league has no money. It is merely an agent for its teams. We have borrowed money. We are investing it into the project. It is not to be repaid by anyone except a member team of the NFL.

I think the long and the short of it is that in Cleveland, in Seattle, in Tampa Bay, and many other communities, we have moved very aggressively to get as much stability as we can in the environment.

On the forced expansion, and I know my time is up, I would just repeat that if this bill does nothing more than what the marketplace would otherwise produce, then there is no need for the bill.

If there are good market reasons for the NFL as a national business facing national competition from baseball, basketball, hockey and all other forms of entertainment, to put a team in Houston, then the market will produce the team without a Federal law requiring it.

Make no mistake about it. This is forced expansion. It is unprecedented Federal intervention which is not justified by anything, including the 1961 statute and the 1966 statute.

[The prepared statement of Paul Tagliabue follows:]

PREPARED STATEMENT OF PAUL TAGLIABUE, COMMISSIONER, NATIONAL FOOTBALL LEAGUE

Mr. Chairman and members of the Committee, I am very grateful for the opportunity to discuss with you (1) the need for federal legislation that would allow a professional sports league to bar, without the threat of treble damage antitrust liability, one of its member clubs from relocating a league franchise and, in particular, (2) H.R. 2740, which purports to be responsive to this need but, because it includes a "forced expansion" provision, would in its current form create more problems than it solves.

The National Football League fully understands the concerns that led to the introduction of H.R. 2740 and other franchise relocation legislation, and we have worked very hard, especially in recent months, to promote franchise stability. These efforts occurred in Seattle, for example, when the Seahawks threatened to move earlier this year; there is now the prospect that that club will remain in the Pacific Northwest for many years to come. As another example, we are working diligently with local officials in Tampa Bay in an effort to preserve the Buccaneers in that community. And, of course, we have entered into a public/private partnership with the City of Cleveland to return NFL football to that community by 1999.

There are, however, substantial risks of costly, burdensome, and protracted treble damage antitrust litigation any time we attempt to prevent a club from relocating to a new community. That is the concern that I address initially below.

THE TEAM RELOCATION ANTITRUST ISSUE

A professional sports league is an unusual business entity because it creates and markets a single, jointly produced entertainment "product." The National Football League, for example, produces athletic competition among 30 separately owned clubs, none of which can produce and present that product on its own. The NFL's product competes in a very broad entertainment product marketplace with other sports leagues, each of which also creates a single, jointly-produced product, and with other entertainment producers of all kinds.

To encourage strong local ties and operations, and in an effort to ensure the integrity of their competitive performances on the playing field, each NFL franchise is held by separate ownership. A League franchise, however, entails a formal commitment to all other member clubs to operate in a particular home location, defined as "the city in which such club is located and for which it holds a franchise and plays its home games..." Under the League's Constitution and By-Laws, the relocation of a team requires a three-fourth's vote of the League's membership.

A review of the NFL's operations over the past forty years demonstrates the League's firm commitment to competitive and geographic balance, as well as the League's strong record of stability in terms of franchise location, the protection of fan and community interests, and expansion. Put simply, we have become America's number one sport by treating well our fans, the public, and the communities in which our clubs play.

Compelling evidence of that commitment is reflected, among other places, in the League's revenue sharing policies, which enable the League to conduct team operations on a nationwide scale and in communities of vastly differing economic potential.

Approximately 55 percent of the revenues of the average NFL club today come from the joint presentation of NFL games on national television networks—both broadcast and cable. These revenues are shared *equally* among all clubs without regard to each club's market size or revenue potential.¹ As a result of the sharing of these and other revenues (including, for example, game receipts that are shared with visiting clubs), the economic advantages of the clubs in the better-situated markets are balanced, albeit not always fully offset, by revenue sharing with the clubs in smaller communities (such as Minnesota, Green Bay, Buffalo, Kansas City, Cincinnati, and New Orleans) or less well-situated markets.

In the past decade, the NFL's member clubs have modified and focused their revenue-sharing policies to support new stadium construction and renovation. By deciding to waive a portion of the game receipts that otherwise would be shared by visiting clubs, all League clubs effectively contribute to the payment of stadium construction (or related financing) costs. Through this mechanism, the League's member clubs have collectively supported the construction of new stadiums in a number of communities (*e.g.*, Atlanta, Miami). The clubs are also collectively supporting the extensive renovation of existing stadiums in a number of communities, including Buffalo, New Orleans, and San Diego.

In this context, an *internal* decision of a professional sports league—whether it relates to funding stadium construction or determining where to locate its franchises—bears no resemblance whatsoever to a "contract, combination or conspiracy" among *independent* economic competitors that provides a coherent basis for applying the antitrust laws.

In the 1980s, in litigation brought by the then-Oakland Raiders against the NFL, a federal court determined that Section 1 of the Sherman Act should apply to such internal league decisions. In that case, a Los Angeles jury found that the NFL had acted "unreasonably" in reciprocating the loyalty of Oakland fans (reflected in twelve consecutive sell-out seasons) and denying the Raiders permission to move the NFL's Oakland franchise to Los Angeles. As a result of that decision, the Raiders were allowed, over the NFL's objection, to abandon Oakland; and a new weapon—"antitrust brinkmanship"—was introduced into the relationship between sports leagues and the communities that they represent.

Prior to the Raiders litigation, a sports league franchise was viewed as a license to serve *the league's* fans and to play *league* games in a prescribed geographical area. A franchise was the means by which the *league* created a stable, continuous relationship with a community, subject to change only by *league* decision, ordinarily through a supra-majority vote.

This stable franchise concept reflected the courts' recognition that, in determining the location of a league's franchises, league members "are not competitors in the

¹ There is a short-term exception for the League's two new expansion franchises, the Carolina Panthers and the Jacksonville Jaguars.

economic sense... They are, in fact, all members of a single unit competing as such with other similar professional leagues."² Not coincidentally, prior to the *Raiders* decision, NFL clubs had been committed to and stable in their home territories for decades.

Since the *Raiders* decision, federal courts, seeing the *Raiders* precedent, have failed to recognize (and potential litigants have elected to ignore) the economic reality of a sports league—that league members are co-producers of a joint product, and thus together constitute a single league enterprise in competition with other entertainment providers. Instead, courts and others have tended to raise form over substance, viewing each franchise as an independent competitive entity that is portable and transient without regard to its commitments as a member of the league enterprise, the needs and preferences of the league, or the interests of the league's fans.

As a result, some clubs—all of which had agreed to be bound by the league's internal procedures for determining franchise location—have been persuaded to abandon their commitments to the league and their fans, and unilaterally to move the league's operations to a new location. If a league seeks to enforce its contractual rights against such moves, it faces substantial antitrust risks, notwithstanding the fact that every other business enterprise in America can decide without antitrust exposure where to conduct its operations.

The antitrust weapon has been claimed not only by clubs that seek greener pastures elsewhere; it has also been brandished by governmental agencies (including state attorneys general), stadium landlords (who assert that they compete in a "market" for club tenants), and former club owners as well. All such parties purport to find a basis in the *Raiders* experience to threaten antitrust litigation to influence or prevent the League's exercise of its business judgment—for or against—a proposed franchise move.

These threats necessarily affect League decisionmaking. Regardless of its merits, each such threat raises the specter of burdensome, divisive, and costly litigation, similar to the *Raiders* case in the 1980s, that inevitably takes years to resolve. If such a suit is successful in establishing financial injury—a possibility that exists especially when the issues are litigated before a "home-town" jury (as in the *Raiders* case)—each plaintiff *automatically* receives *punitive* damages, three times the "injury" that the jury believes has been proved.

Such threats have been a crucial factor in our consideration of recent franchise relocation proposals notwithstanding the hotly disputed view, expressed in H.R. 2740 and upon which that bill appears to rely, that a professional sports league *already* "has the authority to prevent a professional sports team from relocating from one community to another community." H.R. 2740 (Section 2(7)) (findings).

The Rams and the City of St. Louis effectively used the threat of antitrust litigation to force the NFL to acquiesce in the Rams' move from Southern California to St. Louis. By a vote of the League's members, the NFL initially rejected that proposed move based in part on a report that I, as Commissioner, filed with the membership finding that the proposed move did not satisfy the specific criteria of the League's guidelines for franchise relocation. That initial decision created a flood of litigation threats and numerous published predictions of a litigation calamity for the NFL if it were forced to defend such a decision before a St. Louis jury. For example, a leading antitrust practitioner, Maxwell Blecher, who has previously filed franchise relocation litigation against the League, predicted:

"There will be an inevitable antitrust suit, which the Rams will win, and the League will get the message that this is a free country and you can't tell a competitor where to run his business."³

Joe Alioto, another experienced antitrust attorney who represents plaintiffs in four different antitrust lawsuits *currently* pending against the NFL—two of which involve franchise relocation issues—publicly expressed the same view:

"The *Raiders* case stands as precedent. Any team has the right to move to a reasonable place... [If the League attempts to stop the Rams from moving], this would be a tremendous damage action. Georgia Frontiere would win a judgment of at least \$300 million or \$400 million."⁴

² *San Francisco Seals, Ltd. v. National Hockey League*, 379 F. Supp. 966, 969-70 (C.D. Cal. 1974) (rejecting on summary judgment antitrust challenge to the NHL's denial of the Seals' request to move its NHL franchise from San Francisco to Vancouver).

³ Mike DiGiovanna, *In St. Louis, Anger and a Fighting Dog*, L.A. Times, March 16, 1995, at C1.

⁴ Bernie Miklasz, *Antitrust Lawyer Tells St. Louis: Sue The NFL*, St. Louis Post Dispatch, March 8, 1995, at 1D.

While such claims of sometimes self-interested or argumentative lawyers cannot always be taken at face value, elected public officials have made similar threats and predictions. For example, Missouri Attorney General Jay Nixon publicly threatened a multi-billion dollar treble damage suit against any NFL decision to bar the Rams from moving to St. Louis:

"I don't use my antitrust authority unless I feel very strongly about it... We're ready to go in with guns blazing..."⁵

In this context, the NFL's membership eventually reversed its initial decision and reluctantly voted to permit the Rams to move. Even though we believed that we *should* have prevailed in any lawsuit, the NFL members were unwilling to endure years of antitrust litigation in an interested venue—not to mention the punitive nature of any errant treble damage judgment—in order to enforce their contractual right to require the Rams to remain in Los Angeles. In short, the League's judgment was understandably influenced by a preference for antitrust peace rather than war, especially in light of the protracted legal conflicts that had recently plagued other sports and have been negatively viewed by millions of fans.

Such conflicts between states or communities have increasingly placed the National Football League in the posture of a stakeholder, and have caused the NFL to be the target of such threats numerous times over the last ten or twelve years. Moreover, the NFL has paid the price, in litigation expenses and/or settlements, on several occasions. In an effort to keep the Raiders in Oakland, during the 1980s the NFL spent almost \$50 million in legal fees and in ultimate settlement of the antitrust judgment. Ironically, the Raiders and the City of Oakland are currently suing the League, alleging damages of hundreds of millions of dollars, because of the League's alleged refusal to allow the Raiders—the *Oakland Raiders*, as of September 1995—to return from Los Angeles to Oakland in 1994. The Raiders sued the NFL in the 1980s, claiming that the League was holding the club "hostage" in Oakland; now the Raiders are suing the NFL for holding the club "hostage" in Los Angeles and delaying its return to Oakland.

The recent Raiders' lawsuit, moreover, involves a situation where the club never sought—and the League therefore never held—a vote on the proposed 1994 move. Similarly, a former owner of the New England Patriots, even though he also never submitted a relocation proposal to the League, has filed an antitrust suit against the NFL claiming that the League diminished the value of the Patriots franchise by preventing him from moving the club out of New England in the early 1990s. (In separate lawsuits pending in Boston, New York and Philadelphia, *three* former owners of the Patriots are now suing the NFL for "antitrust" grievances, each allegedly arising from a different internal League rule or policy.)

As another example, when the NFL was considering the Browns' proposed move to Baltimore, Maryland Governor Parris Glendening had this to say about the treble damage antitrust action filed by the State of Maryland in federal court in Baltimore:

"We are suing to force the NFL to act because we have a legally binding contract with the Browns... Throughout this country, courts have ruled that the NFL cannot stop team relocations... This is a clear violation of antitrust law and I'm sure we'll be successful in bringing the team to Maryland."⁶

Where will this sort of litigation end? And what public interest does it serve?

The NFL's ability to exercise its business judgment with regard to these and other moves will inevitably be colored by the specter of antitrust litigation unless and until legislation is passed that (1) removes the threat of treble damages as a consequence of a league's decision not to allow a proposed franchise move and (2) provides that litigation, if any, over franchise relocation issues proceed expeditiously in a *neutral* forum.

Misguided treatment of league members as independent economic competitors continues to confuse the antitrust analysis and to make any league decision barring a proposed move susceptible to being characterized as an unreasonable restraint on "competition." Thus, we know that if we deny a franchise relocation proposal, the NFL can be involved for years in expensive and internally divisive antitrust litigation. The dispute would likely be litigated in an interested forum, as was the Raiders' case; and the potential damage exposure associated with a jury's second-guessing of the League's internal decision could be astronomical. Regardless of our confidence in the *propriety* of a decision barring a proposed move, the prospect and threat of such litigation understandably has a chilling influence on a league's willingness to enforce its contractual rights.

⁵ R.B. Falstrom, *Associate Press*, March 4, 1995, at Sports News.

⁶ *Owners Set Browns Vote*, *Austin Am.-St.*, Jan. 19, 1996, at C6.

I respect and appreciate the legislative efforts to find an appropriate solution to this problem, but there are several aspects of the bill now before the Committee—H.R. 2740—that are very troublesome. In particular, the NFL vigorously opposes any provision (such as Section 4(a) of H.R. 2740) that would force a professional sports league to create an expansion franchise—and to take on a new business partner—whenever the League approves the relocation of one of its franchises.

Such unprecedented intervention into the core structure of a private entity cannot be justified. No other business is subject to legislation that would determine how many operating units it must maintain or whom it must accept as an owner or partner.

Moreover, there is no intellectual or policy relationship between (1) the forced expansion provision of this bill and (2) the clarification of the antitrust laws necessary to enable a league to determine where it will conduct its business. The treble damage antitrust threat that I addressed above—the impediment to a sports league's exercise of its reasonable business judgment—arises when the league would otherwise be inclined to *bar* a proposed move. There is no antitrust problem associated with a league decision to *allow* one of its franchises to move. Nonetheless, the forced expansion provision of H.R. 2740 is linked to the latter situation—a league decision that has no relationship, for all practical purposes, to the antitrust law clarification that is the legitimate focus of the bill.

Nor can the forced expansion provision be justified by suggestions that professional sports leagues have in some way abused a public trust by abandoning communities that have offered local sports franchises substantial support. The facts do not support any such assertion. With only two exceptions (including Los Angeles, to which the NFL is committed to return), every community that had a professional football team 30 years ago, at the time of the consolidation of the National Football League and the American Football League, has an NFL team today. In the interim, the NFL has engaged in a responsible and orderly process of expansion, having added new franchises—and brought professional football to NFL fans—in six new areas: Atlanta and New Orleans in the late 1960s, Tampa Bay and Seattle in the 1970s, and most recently the Carolinas and Jacksonville. Indianapolis and Phoenix also secured NFL teams during those decades.

Some have suggested that legislation passed by Congress in the 1960s—the Sports Broadcasting Act and the bill introduced by Senator Dirksen to authorize the NFL-AFL merger—justifies Congress' intrusion into the structure, ownership, and operation of professional sports leagues. Those suggestions are ridiculous. Both legislative acts were intended to alleviate some of the pressures that, decades ago, threatened the ability of some clubs—especially those in smaller markets—to remain competitive or, in some cases, to survive. After those bills were enacted, the NFL experienced many years of stability in terms of franchise location; indeed, it was not until the *Raiders* court denied us the right to control the location of our Oakland franchise that *any* NFL club moved. The problem is thus not a lack of responsibility on the part of the League—the problem is a distortion of the antitrust laws that prevents the League from being responsive to fan interest and community needs.

The breadth of the forced expansion obligation proposed by H.R. 2740 confirms that its source is not fundamental fairness or sound public policy. The obligation would apply regardless of the merits of the approved relocation, regardless of whether the relocated team had been supported in its prior community, and regardless of the disruptive effect of mandatory expansion on the league. The only requirement for such mandatory expansion would be the identification by the community from which a team has relocated of an investor willing and able to match the fee paid by the League's last expansion franchise; whether the investor were otherwise qualified or suited to own and control a sports franchise would be irrelevant.

Moreover, the forced expansion obligation would exist for up to three years after a league decision to relocate a team. As a result, there would be great potential for abuse and manipulation; a community could create one set of conditions for the owner of an existing team, leading to a relocation, and then create completely different conditions for a successor seeking a team under the "forced expansion" requirement.

The effect of a forced expansion provision would be to freeze all teams in their current locations in perpetuity. It would thus make entirely meaningless the league decisionmaking process that is supposedly protected from antitrust challenge by the bill: as a practical matter, under this legislation no league could ever address a difficult stadium situation on its merits and in light of marketplace conditions; the "forced expansion" provision would effectively preempt any choice other than con-

tinuation of the status quo. (Among other things, forced expansion would dilute each member's allocation of shared revenue sources and would, in turn, jeopardize the ability of lower revenue clubs to field competitive teams, thereby undermining the quality of the League's entertainment product for all of the country's fans.)

Proposals to require forced expansion provisions as the cost of clarification of the antitrust laws were squarely *rejected* by the U.S. Conference of Mayors. Instead, the mayors supported proposals that rely on limited judicial review of franchise relocation decisions as a means of protecting the public interest. The mayors' rejection of forced expansion sends a strong signal that such elements of this bill are unnecessary, unwarranted, and inconsistent with the public interest.

I have other concerns with H.R. 2740, including the fact that the bill creates an uneven playing field between Major League Baseball, on the one hand, and the NFL (as well as other sports), on the other, in relation to the construction of new stadiums and arenas. The bill does so by excluding baseball from the coverage of its "forced expansion" provision.

Our other concerns include, but are not limited, to (1) the bill's proposed retroactive application, which may require the NFL to expand by two teams to replace the teams vacating Cleveland (or the team selected to move to Cleveland) and Washington, D.C. (the Redskins are moving across state lines to Maryland), (2) the fact that the bill would override league ownership rules (potentially requiring a league, for example, to take on as an owner an individual with ties to gambling interests), and (3) the extent to which the bill involves the government in establishing the purchase price for an expansion franchise. With regard to *this* legislative initiative, my bottom line is clear:

As much as I would like to see a bill that would remove antitrust brinkmanship from sports leagues' consideration of franchise relocation issues, it would be better to maintain the status quo, with all of its problems and flaws, than to pass H.R. 2740 in its current form.

I nonetheless urge the Committee to consider alternatives that would (1) secure for sports leagues, their fans, and their communities the needed elimination of the treble damage antitrust threat as a consideration in a league's evaluation of proposed franchise relocations, and (2) enable a sports league to reject a proposed relocation that, in the exercise of its reasonable business judgment, it determines is not justified.

Mr. OXLEY. I thank the gentleman. While we are on the subject of commissioners, why don't we now recognize the Commissioner of the National Hockey League, Mr. Bettman. Welcome.

STATEMENT OF GARY B. BETTMAN

Mr. BETTMAN. Thank you, Mr. Chairman, members of the subcommittee. On behalf of the National Hockey League, I appreciate your invitation to participate in this hearing and address H.R. 2740.

As is obvious from today's proceedings, the application of the antitrust laws to the operations of professional sports leagues remains a confusing and emotional issue.

I have a more complete statement, more thorough statement, and I request that be incorporated into the record and I will make a few observations and try to keep things relatively brief.

Mr. OXLEY. All the full statements will be made a part of the record.

Mr. BETTMAN. Thank you. I personally have over 15 years of experience in professional sports and have been involved in the management of two Leagues, the NBA and since February 1993, the NHL. I know from personal experience that the application and misapplication of the antitrust laws to internal League operations distorts League decisionmaking, undermines the league's ability to act in the public interest and puts at risk the most central operating principles upon which a sports league is founded.

However, the specific bill before the committee, H.R. 2740, does not in our view represent the constructive approach to this issue.

The NHL has long supported franchise stability and has worked hard to maintain teams in their current locations whenever possible. We strongly prefer that NHL teams remain in their present locations so long as they are both competitively and economically viable.

Two-thirds of NHL clubs will soon be playing in new or renovated arenas to which they have contributed financially, and these arenas are being built without threats of relocation. These public/private partnerships are a model for building stable team/community relationships.

The NHL has also concentrated on developing new revenue sources that can be equally shared among the member clubs, thereby helping to reduce the financial pressures that create incentives for team movement.

If an NHL team wishes to move, it must comply with a detailed and thorough approval process that guides the league and its member clubs. That process relies on objective standards and hard economic data, ensures due process for the club and other interested parties and promotes franchise stability.

A club wishing to move must provide extensive data relating to its fan support, finances, its proposed operations in a new community, whether and on what basis it is to remain in its current location and a variety of other important considerations, but the burden is clearly on the club seeking to move to demonstrate why it should be permitted to do so.

The NHL is not seeking any affirmative action by Congress on this issue. We believe that our current rules, a copy of which are attached to my statement, are reasonable, pro-competitive and lawful, but those rules have not been tested in any court and there are always risks that the rules would be challenged.

As we all know, antitrust litigation is expensive and time consuming. To that extent and to the extent that H.R. 2740 would exempt the antitrust laws or League decisions from antitrust law scrutiny on team locations and avoid such litigation, the bill is constructive.

However, H.R. 2740 is worse than the current state of the law, because it would require sports leagues to expand into any city from which a team moves so long as a qualified investor presents himself. This extraordinary and unprecedented intrusion into the operations of a private business goes far beyond what is required to correct any problem.

Forced expansion, and it is forced expansion, no matter how you dress it up or rationalize it, it is forced expansion and it has nothing to do with antitrust reform and entirely ignores economic reality.

Under the bill, a team cannot move unless specific objective criteria are satisfied, yet even when those criteria are satisfied and the move is therefore proper and justified, a league could still be required to put a team, a new team in the old city. The investor might not even be required to satisfy a league's ownership criteria or to ensure a new team's ability to operate successfully in that location for the long term.

The bill also ignores such important issues as the availability of adequate player talent and expansion teams must be competitive if they are to operate in an economic manner and provide high quality entertainment for their fans.

Unless expansion takes into account the available player talent, the result will be to create teams that struggle competitively and economically and then become future candidates to move. Moreover, too much dilution of player talent can damage a league's overall product and to legislate expansion ignores that vital consideration.

I will be brief. I am almost done. I see my time is up.

The forced expansion requirement is also unfair to cities that presently do not have teams. It distorts the expansion process by turning cities that do not have teams into second class citizens, making them stand in line behind cities that currently have teams.

If the law forces the operation of unprofitable franchises, future expansion to new markets also becomes doubtful. There is always and will always be more cities that want teams than there are teams.

H.R. 2740 substitutes a Federal mandate for market oriented business decisions by a league.

I repeat in closing that the NHL is not seeking legislation on this issue but if Congress is inclined to legislate, it emphatically should not pass this bill. H.R. 2740 is worse than the current law. The NHL would strongly prefer no legislation than to have this bill.

Thank you.

[The prepared statement of Gary B. Bettman follows:]

PREPARED STATEMENT OF GARY B. BETTMAN, NHL COMMISSIONER

Mr. Chairman and members of the Subcommittee, on behalf of the National Hockey League, I appreciate your invitation to participate in these hearings. I believe that the subject matter is important and that the application of the antitrust laws to the operations of professional sports leagues remains a confusing and emotional issue. Unfortunately, the Bill before you, H.R. 2740, does not address this problem in a constructive manner.

The National Hockey League consists of 26 teams, 19 of which are presently in the United States and 7 of which are in Canada. A list of NHL teams and their current home cities is attached to this testimony. Beginning next Fall, the Winnipeg Jets will play in Phoenix, Arizona. The distribution of NHL teams is a unique aspect of our league. While other leagues have one or two teams in Canada, only the NHL operates throughout North America. We are proud of our Canadian heritage, our international presence, and of the fact that an increasing number of NHL players come from outside North America with many countries now represented among the ranks of our players.

In recent decades, the NHL's challenge has been to move beyond being perceived as a cold-weather sport generally confined to the Northeastern United States and Canada, and into a league that is truly national in scope and operates throughout North America. We have made considerable strides towards that goal by placing teams in Anaheim, Dallas, Denver, Miami, Ottawa, San Jose, and Tampa Bay in recent years. Most of those additions have been the result of expansion, although in two instances, Dallas and Denver, the team relocated. The move to Phoenix can be seen as part of this same trend.

The economics of the NHL are different from those of other leagues in a variety of ways. NHL teams are far more dependent than their counterparts in other leagues on revenues from ticket sales and in-arena sources, such as advertising, concessions and the like. Although we have made considerable strides in generating new television revenues, particularly through our contracts in the United States with ESPN and Fox, the fact remains that the NHL's national television revenues are currently only a small fraction of those earned by teams in other leagues. A second important factor is that our Canadian teams are forced to deal with the dispar-

ity in value between the U.S. and Canadian dollars. That disparity means that while Canadian teams pay many of their costs, including their players salaries, in U.S. dollars, they earn much of their revenue in Canadian dollars. At the present currency differential, Canadian teams find themselves with approximately \$1.30 of expense for each \$1 of revenue. We have recently attempted to address this problem as well, by creating two funds to help lower revenue teams in Canada address the currency differential. Under this new currency equalization program, \$7 million or more will be available to eligible Canadian teams. We are hopeful that this program, combined with enhanced local marketing and further growth in League-generated shared revenues, will help to stabilize our remaining Canadian teams.

These revenue pressures are compounded by the fact that NHL teams have a cost structure very similar to other sports. Each team has a major league roster of 24 players plus an additional complement of minor league players. The average major league payroll is over \$19 million, and NHL teams have all of the additional non-player expenses associated with operating a sports team, including arena costs, travel, non-player salaries, marketing, training camp, and a host of others. A number of our clubs do not earn operating profits.

Neither the specific issue of franchise relocation nor the broader question of how the antitrust laws should apply to sports leagues is new to Congress. Congress has reviewed these issues in detail in each of the past four decades.

I personally have over fifteen years of experience in professional sports, and have been involved in the management of two leagues—the NBA and, since February of 1993, the NHL. I know from personal experience that the application and misapplication of the antitrust laws to internal league operations distorts league decision making, undermines a league's ability to act in the public interest, and puts at risk the most central operating principles upon which a sports league is founded.

With respect to franchise relocation specifically, the NHL has long supported franchise stability. We are proud of our record in that regard and of the steps our clubs have taken to strengthen their ties to their home communities. Two-thirds of NHL Clubs will soon be playing in new or renovated arenas to which they have contributed financially. These public-private partnerships are a model for building stable team-community relationships in the future. In addition, the NHL has concentrated on developing new revenue sources that can be equally shared among the member clubs, thereby helping to reduce the financial pressures that create incentives for franchise movement. The currency equalization plan I described earlier is a further step in this direction.

Over the past 20 years, a limited number of NHL teams have found it necessary to move to a new city. In each instance, the move was necessitated by the economic circumstances under which the team was then operating and in each instance, the move ultimately strengthened the league. In other instances, the league has opposed team moves, as in the mid-1980's when the St. Louis Blues threatened to relocate from that city, a move which the league opposed in court.

During my term as Commissioner the league has worked hard to maintain teams in their current locations wherever possible. Thus, we devoted considerable time and attention to preserving the Edmonton Oilers in Edmonton, the New Jersey Devils in New Jersey, and two other Canadian franchises, the Quebec Nordiques and Winnipeg Jets, in their current locations. Although we were successful in the first two instances, we were not able to maintain the Quebec and Winnipeg franchises. I have made clear my preference for NHL teams to remain in their present locations, so long as they can be both competitively and economically viable in those locations. This may require that cities and states work cooperatively with their local teams to provide conditions that favor a team's successful operation. Given the substantial investments that NHL owners make in their clubs, it is entirely appropriate for communities to make similar investments to help ensure the successful operation of those clubs.

If an NHL team wishes to move, it must comply with a detailed and thorough process that governs such requests. That process is intended to guide the League and its Member Clubs in evaluating a proposed move with reference to objective standards and hard economic data, to ensure due process for the Club seeking to move, and to promote franchise stability. The league rules require that a Club wishing to move submit an application and provide extensive data relating to its fan support, finances, its proposed operations in a new community, whether and on what basis it can remain in its current location, and other important considerations. The matter is then independently evaluated by one or more league committees before being submitted to the entire membership. The burden is clearly on the Club seeking to move to demonstrate why it should be permitted to do so.

The NHL is not seeking any affirmative action by Congress on this issue. We believe that our current rules, a copy of which are attached to my statement, are rea-

sonable, pro-competitive, and lawful. The standards that guide our decisions are consistent with those outlined in both past and current legislative proposals and in particular H.R. 2740. But those rules have not been tested in any court, and there are always risks that the rules would be challenged. This is particularly true since litigation is generally fought in an interested forum, as, for example, in the Oakland Raiders case, where a Los Angeles-based jury determined that it was "unreasonable" under the antitrust laws for the NFL to require the Raiders to continue to play in Oakland. Even if a league ultimately prevails, as it should, it would nevertheless be subject to years of expensive and divisive litigation, and its operations would be clouded by threats of treble damage liability.

The specific Bill before the Subcommittee, H.R. 2740, appropriately recognizes the need to correct the misapplication of the conspiracy principles of Section 1 of the Sherman Act. By treating sports leagues as groups of independent economic competitors—which they emphatically are not—rather than as partners or lawful co-venturers, as they most certainly are, courts can turn every significant league decision into a potential treble damage claim. H.R. 2740 would correct this legal anomaly and afford leagues the same right to manage their internal operations that every other business in this country has.

Although this aspect of H.R. 2740 is laudable, the Bill is fatally flawed in a crucial respect. H.R. 2740 would require sports leagues to expand into any city from which a team moves, so long as a "qualified investor" presents himself. This extraordinary and unprecedented requirement goes far beyond what is required to correct any problem, and is unfair, uneconomic and ultimately worse than current law.

To my knowledge, if H.R. 2740 were to become law, it would be the first time Congress has ever directed a private business to operate in locations and on terms designated by Congress. This interference into the operations of a private business is entirely unnecessary. The core of the problem lies in the misapplication of the antitrust laws. If Congress is to legislate, it should confine itself to a straightforward reform of these laws.

Moreover, the forced expansion provision of H.R. 2740 entirely ignores economic realities. Under the Bill a team cannot move unless specific objective criteria are satisfied. Yet even when those criteria are satisfied, and the move is therefore proper and justified, a league would be required to replace the team in the old city. This would be true even if there was no guarantee of adequate facilities, proper financing, or sufficient fan support. The "investor" would not even be required to satisfy a league's ownership criteria. We respectfully submit that this requirement of expansion makes no sense. Where a move is justified under league rules and the criteria of H.R. 2740, the sudden appearance of an "investor" should not be sufficient to override the league's decision.

Indeed, one may fairly ask where this investor was when the old team was moving and why he did not step up to purchase the old team before it moved. The answer points out another flaw in the Bill. H.R. 2740 requires the expansion team to sell at a price that will generally be well below that of an existing team. Thus, a would-be owner who wanted to preserve a team in a particular community would have an incentive to allow the existing team to move and then offer to buy the expansion team at a steep discount. The effect will ultimately be to discourage potential investors from purchasing teams to maintain them in their current location and thereby encourage moves.

Third, the Bill ignores such important issues as the availability of adequate player talent. Expansion teams must be competitive if they are to operate in an economic manner and provide high-quality entertainment for its fans. Unless expansion takes account of the available player talent, the result will be to create teams that struggle competitively and economically, and then become future candidates for a move.

Fourth, the forced expansion requirement is unfair to cities that presently do not have teams. It distorts the expansion process by turning cities that do not have teams into second class citizens and making them stand in line behind cities that have teams today. If the law forces the operation of unprofitable franchises, future expansion to new markets is also in doubt. There will always be more cities that want teams than there are teams. H.R. 2740 substitutes a federal mandate for market-oriented decisions by leagues.

I repeat: the NHL is not seeking legislation on this issue. But if Congress is inclined to legislate, it emphatically should not pass this Bill. H.R. 2740 is worse than current law. The NHL would strongly prefer no legislation to this Bill.

Once again, I appreciate the opportunity to appear and offer the NHL's views on these issues.

Bo:
Burt
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ATTACHMENT A

Member Clubs of the NHL

Club	Home City
Boston Bruins	Boston, Massachusetts
Buffalo Sabres	Buffalo, New York
Calgary Flames	Calgary, Alberta
Chicago Blackhawks	Chicago, Illinois
Colorado Avalanche	Denver, Colorado
Dallas Stars	Dallas, Texas
Detroit Red Wings	Detroit, Michigan
Edmonton Oilers	Edmonton, Alberta
Florida Panthers	Miami, Florida
Hartford Whalers	Hartford, Connecticut
Los Angeles Kings	Los Angeles, California
Mighty Ducks of Anaheim	Anaheim, California
Montreal Canadiens	Montreal, Quebec
New Jersey Devils	East Rutherford, New Jersey
New York Islanders	Long Island, New York
New York Rangers	New York, New York
Ottawa Senators	Ottawa, Ontario
Philadelphia Flyers	Philadelphia, Pennsylvania
Pittsburgh Penguins	Pittsburgh, Pennsylvania
St. Louis Blues	St. Louis, Missouri
San Jose Sharks	San Jose, California
Tampa Bay Lightning	Tampa, Florida
Toronto Maple Leafs	Toronto, Ontario
Vancouver Canucks	Vancouver, British Columbia
Washington Capitals	Washington, D.C.
Winnipeg Jets	Winnipeg, Manitoba

ATTACHMENT B

EXCERPT FROM NHL BY-LAWS RELATING TO TRANSFERS OF FRANCHISE LOCATION

BY-LAWS

SECTION 36—TRANSFER OF FRANCHISE LOCATION

16.1. Application.

- a) Any Member Club seeking consent to a transfer of its franchise and club to a different city or borough in accordance with Section 4.2 of the Constitution, shall file a written application for such consent with the President of the League.
- b) Such application shall be filed no later than November 15 of the year prior to the year in which it is proposed the club will commence its first season in the new location, unless a majority of the Member Clubs consents to a later filing date.
- c) The application shall include a statement as to why the applicant seeks such transfer. It shall also include a statement of reasons why the applicant believes consent to the proposed transfer should be given and shall be accompanied by such documentation as the applicant deems appropriate, in light of the provisions of this By-Law Section 36 and Section 4.2 of the Constitution.

16.2. Investigation.

- a) The President shall assign to one or more Committees of the League responsibility for investigating the merits of the proposed transfer and of the application for consent.
- b) Each such Committee shall conduct such investigation as it deems appropriate under the circumstances and shall be guided by the considerations set forth in this By-Law section.
- c) As part of its investigation, any such Committee may, through any of its members or any officer of the League, request the applicant to submit any documentation or information which it deems pertinent to any such applicable considerations. The applicant shall promptly submit all such requested documenta-

tion or information to the Committee, or, if it is unable to do so, shall promptly submit a written statement explaining why it is unable to do so.

- (d) Each such Committee shall, prior to the vote by the Member Clubs on the transfer application, present a verbal and/or written report on the results of its investigation to the Board of Governors.

36.3. Presentation.

- (a) Prior to the vote on the transfer application, the applicant shall be afforded an opportunity to make a presentation in support of its application at a meeting of the Board of Governors.
- (b) If the proposed transfer of location also involves a sale, assignment or transfer of a membership or ownership interest in a Member Club, representatives of the proposed new owners shall also be afforded an opportunity to make a presentation in support of the application at a meeting of the Board of Governors.
- (c) At any such meeting, the Governors shall be afforded an opportunity to ask questions of the representatives of the applicant and of any proposed new owners concerning any aspects of the transactions for which consent of the Member Clubs is being sought.

36.4. Vote.

- (a) Following such presentation(s) to the Board, there shall be a vote of the members as to whether to consent to the proposed transfer of location, in accordance with the provisions of Section 4.2 of the Constitution and this By-Law Section 36, and, if applicable, as to whether to consent to any proposed sale, assignment or transfer of a membership or ownership interest in a Member Club, in accordance with the provisions of Section 3.5 of the Constitution and By-Law Section 35.
- (b) Any such vote shall be by closed ballot if a majority of the members are in favor of conducting the vote by closed ballot but shall otherwise be by voice vote or open ballot.
- (c) A proposed Transfer of location receiving the affirmative votes of a majority of the Member Clubs present and voting shall be deemed to have been consented to by the League in the event that the prohibition on transfers recited in Section 4.2 of the Constitution is determined by counsel to the League specially retained for this purpose, based on all relevant factors, to be unlawful with respect to that proposed transfer.

36.5. In determining whether to consent to the transfer of a Member Club's franchise to a different city or borough pursuant to Section 11.2 of the Constitution, each Member Club shall be guided by the following considerations:

- (a) Whether the club in question is financially viable in its present location and, not, whether there is a reasonable prospect, based on any of the considerations set forth in subsections (b) through (j) below, or for any other reason, that it could become financially viable there, either under its present ownership or under new ownership.
- (b) The extent to which the fans have historically supported the club in its present location.
- (c) The extent to which the club has historically operated profitably or at a loss in its present location.
- (d) Whether the present owner of the club has made a good faith effort to find prospective purchasers who are prepared to continue operating the club in its present location and/or has engaged in good faith negotiations with such prospective purchasers.
- (e) Whether there is any prospective purchaser of the club and franchise who is prepared to continue operating the club in its present location and, if so, whether any such prospective purchaser is willing and able, if necessary, to sustain losses during at least the initial years of its operation there.
- (f) The extent to which the club might be operated in its present location in a more prudent, efficient, and/or cost-effective manner than it has been in the past.
- (g) The extent to which there is a reasonable prospect that significant additional revenues may become available to the club within a reasonable time in its present location, either from the sale of media rights or from other sources.
- (h) The extent to which local government authorities in the present location are prepared to reduce the operating costs of the club, either by granting tax relief or otherwise.
- (i) The extent to which the operating costs of the club in its present location might be reduced through the willingness of the applicable arena authority to reduce the rent charged to the club or otherwise to reduce the club's costs or increase

- its revenues, and/or through the willingness of other suppliers to reduce their charges for goods or services provided to the club.
-) The adequacy of the arena in which the club plays its home games and the willingness of the applicable arena authority to remedy any deficiencies in the arena.
 -) Whether there will be a suitable arena available in which the club can play its home games in the proposed new location.
 -) The extent to which it appears likely, based on the population, demographics, and interest in hockey in the area of the proposed new location, or based on any other relevant facts, that support for a franchise there will be sufficient to make the franchise financially viable in the proposed new location on a continuing basis.
 - n) The extent to which the owners of the club are willing and able, if necessary, to sustain losses during at least the initial years of its operation in the proposed new location.
 -) The extent to which consent to the proposed transfer is likely to damage the image of the League as a major sports league, be a disincentive to participation in the League, or otherwise to have an adverse effect on the League's ability to market and promote League hockey in the United States and/or Canada.
 -) The extent to which the proposed transfer would adversely affect traditional rivalries that have been established between the club in its present location and other Member Clubs.
 -) The extent to which consent to the proposed transfer would result in the absence of a League franchise in a major market.
 -) The extent to which it appears likely that, if the proposed transfer is approved, the club would draw more or fewer fans when playing as the visiting team in the home arenas of other Member Clubs.
 -) The extent to which the proposed transfer would present particular disadvantages for the operation of the League, such as travel or scheduling difficulties or a need for divisional realignment.
 -) The extent to which the club has, directly or indirectly, received public financial support in its present location by virtue of any publicly financed arena, special tax treatment, or any other form of public financial support.
 -) The extent to which the proposed transfer, if approved, would affect any contract or agreement in effect between the club and any public or private party
 -) The extent to which League consent to the proposed transfer might expose the League to liability to any third party for breach of contract, interference with contractual relations, or for any other cause.
 -) The extent to which the ownership or management of the club has contributed to any circumstance which might otherwise demonstrate a need to transfer the club to a new location.
 - v) The extent to which the club has engaged in good faith negotiations with representatives of the community in which it is presently located concerning terms and conditions under which the club would continue to operate in that location.
 - c) Any other considerations relevant to whether it would be in the best interest of the League to consent to the proposed transfer.
- 6.6. Any such consent by the Member Clubs may be made subject to reasonable and appropriate conditions, including payment to the League of a transfer fee to reflect the goodwill developed by the League in the new location, and/or payment of an indemnification fee (or fees) to reflect the goodwill developed by a neighboring member (or members) in the new location.
- 6.7. Any proposed transfer of a franchise to a different city or borough which would also involve the sale, assignment or transfer of a membership or of an ownership interest in a Member Club shall also be subject to the provisions of Section 3.5 of the Constitution and By-Law Section 35.

Mr. FIELDS [presiding]. Thank you, Mr. Bettman. It is my pleasure and honor to introduce a friend, a colleague, a successful entrepreneur, a person who was born in what was my congressional district, a dynamic leader, a coalition builder, someone who is not a politician, someone who leads and represents and is taking our city into the 21st Century, and as I understand, unprecedented in his ability to count votes, and I would ask that maybe this is the time we should bring the legislation up for a vote—just kidding—Mayor Lanier.

STATEMENT OF BOB LANIER

Mr. LANIER. The basic problem as I see it is brought about by the fact that this is not a contest between cities, but that if we focused on the NFL, the NFL first got exemptions so they could pool television revenue, but in this exemption, there were no rights provided for fans. Later, the NFL and AFL merged, creating a monopoly, but again, no provision for fans.

We now have rapid franchise movements and the league wants to get exemptions for the antitrust laws because occasionally they are held liable in court for violating those laws, but again in that request, there is no protection for fans.

It is the only instance I've seen in the almost 50 years since I've been out of law school where you have a monopoly, granted monopoly powers in substantial part, that at the same time wishes to avoid all regulation in the name of free enterprise.

You have the result that because they do have the monopoly status, they have a number of franchises that is below market demand, so that they create an artificially high price. That coupled with a league rule that says the owner gets to keep all the money from luxury boxes, the luxury facilities that attend them, make old stadiums not functionally obsolete, financially obsolete, because of their rules, because of the shortage of franchises.

We have the anomaly of working men and women being asked to put taxes on their homes, and we did this earlier in Houston, to pay for luxury boxes for rich owners, rich fans, rich players, and these guys that pay the tab can't afford to go sit in them. That is fundamentally wrong. That is fundamentally unfair. That is an area of dissatisfaction in this country with the system. They feel like they are losing out to interests far more powerful than they.

The NFL says, yes, but give us an exemption of the antitrust laws because we are worried about the Davis case, which just said follow your own rules, make them and follow them, and everything will be okay.

As I said earlier, that is like asking the fox to guard the chicken house and this particular fox has a lot of city feathers burping out of his mouth, to where as a city chicken, I feel a little unsafe if that is the only protection that we have.

Mr. Tagliabue said we had a hearing and that's true. Let me tell you about that hearing, where they would see if they would transfer out of Houston.

No. 1, I didn't get to hear the owners make their case. I got to make mine. I couldn't hear them. I couldn't get a written advance of what they had to say. I don't know if they said true or not about their rules. Also, the jury gets something like \$1 million a piece for voting yes through the transfer fees. I'm a little more comfortable with Federal juries; even though the court system is not perfect, at least they don't have that level of compensation. Maybe they get \$5 a day and that's not from the person for whom they vote.

I don't think they followed their own rules in permitting Houston to leave. One of their rules is they look at population growth. We grew 380,000 in these last 4 years, the third biggest in the Nation. We have 4.1 million people. I don't think they look at fans. We had over 100 percent attendance 9 years in a row.

I don't know. I wasn't permitted to attend the meeting. I think that sort of procedure—that doesn't argue we ought not to have it reviewed in the courts. It argues it is a star chamber procedure, much like they did in England that caused our forefathers to write this Constitution.

I taught administrative law in our law schools. I've never seen a procedure that I thought violated due process more in something over between 40 and 50 years of business.

This sudden passion for the free enterprise system, for people that enjoy monopoly status, is somewhat mysterious to me. All it does is it creates artificially high prices, sort of food stamps for owners.

Businesses are required to do business, other businesses in other lines of work, that is not an usual thing. We have pipelines, as you know, Mr. Congressman, down in our district. They have "must carry" provisions. Banks have obligations. Electric utilities have obligations. The television stations have obligations. That is not a novel thing.

We have a lot of provisions we have talked about. I would just ask you for goodness sakes, if you pass anything, give some serious consideration to protecting the people who are asked now to foot the bill because of a bad labor contract.

Here in Houston, if we make them foot the bill, what I have to do is I have to take that money out of water, sewer, police, fire, schools, and I don't want to do that. I ought not to be put through that choice because their price is artificially and unfairly high.

One last thing. I don't seek in this to downgrade any other city or to second grade their choice or their sense of priorities. I am arguing the price is artificially too high and we weren't given a fair shake. I'm not seeking in this that I would work out language where it wouldn't specifically treat the Nashville situation. That is not my objective.

My objective is for now and for the future and for Nashville in the future to give the people that foot these bills some protection. These laws ought not to be totally one sided.

[The prepared statement and attachments of Bob Lanier follow:]

PREPARED STATEMENT OF BOB LANIER, MAYOR, HOUSTON, TEXAS

Mr. Chairman and Members of the Subcommittee, I sincerely appreciate the opportunity to appear before you and to share with you the experience that the City of Houston has had regarding its professional football team and my thoughts on the process and its effect on taxpayers.

The Houston urban area has supported the Houston Oilers since their infancy, causing a modest \$25,000 investment to grow to a \$100 million plus fortune. This support was for a team that has experienced both good years and bad. At the expiration of the 1994 season, the Oilers—coming off a 2-14 year—demanded (see attached correspondence) that the City of Houston choose between its priorities (neighborhoods, parks, police, youth programs, etc.) and transfer a minimum of \$150 million plus of taxpayers' funds to the construction of a new stadium playground for the Oilers or face the loss of the team to Nashville.

In Houston, we have chosen the priorities of our youth programs (some 10,000 youngsters this fall are in City sponsored interleague soccer teams), but we do not think we should have been forced to do so.

We do not think in any other field would a business threaten to uproot itself and leave that city unserved where, as in this case, the business has been enormously profitable. That it is happening in Houston is caused only by the statutorily unregulated monopoly that the NFL owners and players' association enjoy and are now using to gouge their fans.

Harris County taxpayers built the Astrodome for the Oilers and the Astros about 30 years ago. In 1967, to meet a threat by Mr. Adams to move the Oilers, a mix of luxury box buyers and Harris County taxpayers paid in principal and interest another \$100 million plus to hold the Oilers, gaining a ten year lease. After only seven years, and coming off a 2-14 season, the Oilers want to move to Nashville because Houston did not build a second domed stadium. The City responded that it had higher priorities: police, fire, parks, neighborhoods, youth programs. The Oilers' ultimatum and the City's response are attached.

The Oilers are, of course, a part of the National Football League monopoly. This monopoly protects owners, television networks and the players' union. It does not protect urban taxpayers. Indeed, it causes the taxpayers great harm. In no other industry would such a situation be allowed to continue.

The real demand is for luxury boxes, not more seats. So the average working person is asked to put a tax on their home or pay sales or some other consumer tax to build luxury boxes in which they cannot afford to sit. Frequently, the new stadium is smaller. The working person is asked to be satisfied with the "sense of pride" they get from this arrangement, which will last until another team bids more for their players, or until another city bids more for the team.

NATURE OF NFL MONOPOLISTIC PRACTICES AS IT RELATES TO URBAN TAXPAYERS

The League controls the number of franchises which it keeps artificially low. It is as though Congress gave the motion picture industry a monopoly and that industry then limited theaters to thirty cities. The Oscar would be the Super Bowl. Movie moguls would get even richer off taxpayers and call it free enterprise.

The League has a related practice of not allowing a new expansion franchise into a city losing its franchise so as to add to the pressure. It seems to matter not that a franchise is profitable, that fans are numerous or that the stadium is in good shape. It may be large, as in the case of the Los Angeles Coliseum. It may be one deemed but a few years earlier suitable for a future Super Bowl, as the Houston Astrodome. Or it may be Cleveland. Any other city could be next. No one is safe. No one is secure. It can happen without warning. The dollar rules, but it only rules because of special protection granted professional sports by previous federal legislation and practice.

LITIGATION POSSIBILITY

There remains a possibility that this unconscionable monopolistic practice will be successfully challenged in the courts under existing anti-trust laws.

When Al Davis sought to move from Oakland to Los Angeles and the owners tried to stop him, he sued successfully. The owners have treated this, not as a sign that agreements in restraint of trade are illegal, but as a case holding that owners can move whenever they want to. This has been parlayed to the extortionist practice of threatening moves unless taxpayers give them expensive stadium improvements or a new stadium. The League holds the number of expansion franchises below market demand, and the trap is complete. Encouraged, owners now demand and get millions in "moving expenses" and guaranteed ticket sales. Often, taxpayers are left with an empty stadium, having more money invested in the franchise than do the owners.

I understand that this lawsuit will be plowing new ground. However, it is a serious legal and social position. The amount of damages sought could be the value of a franchise lost, as measured by what the new team had to pay to get it. Interestingly enough, the new city might also sue since its price would have been unlawfully set. If one takes \$200 million as a norm and say that only half the cities in the NFL are involved (15 out of 30) you come to the idea of \$3 billion in damages which, when tripled, would amount to \$9 billion.

SUGGESTED SOLUTIONS

I believe that H.R. 2740 by Rep. Martin Hoke as amended by the House Judiciary Committee is the primary piece of legislation proposed today that will correct the problems I have discussed. The bill, although there are some differences in detail, substantially addresses the concerns voiced by the Conference of Mayors when we passed the attached resolutions.

Some of the more important points for you to consider out of these resolutions are as follows:

1. Leagues should adopt objective standards and criteria in relocation rules which are subject to reasonable judicial review.

2. These relocation rules should include a public interest component which measures and considers fan loyalty, community support, and local offers to purchase and retain teams.
3. Franchises should be required to give the community adequate notice and hold public hearings prior to initiating any effort to negotiate a relocation.
4. Existing leases and the status of any other legal rationale which may affect the relocation should be strongly considered.
5. Public ownership of a team similar to the local ownership structure of the Green Bay Packers should be allowed and indeed encouraged by the professional leagues.
6. Cities with a previously profitable team should be offered the first option on any league expansion without requiring payment of an expansion fee to the league. Although the Hoke legislation has different specifics on the question of expansion, the treatment of the expansion provision in the bill as adopted by the Judiciary Committee will ensure League compliance with the other provisions of the bill.
7. All public debt issued to build a facility for a professional franchise must be retired by the franchise before relocation would be allowed. Failure to abide by this would subject the responsible parties to triple damages in the form of a federal excise tax or other federal penalty.

CONCLUSION

My conclusion is that the NFL has an unregulated monopoly that is broader than it deserves. Cities, as much as they may have professional football, should not be required to short what are surely higher priorities in order to fund increasingly expensive stadiums, luxury boxes and ticket sales. In no other entertainment industry would this situation be allowed to continue.

The monopoly protects the networks, team owners, the leagues and the players. And together they have made a handsome return.

Professional football is widely enjoyed in this country. However, most recently it has taken an ugly turn. Not satisfied with huge television and gate revenues, the teams have made hostages of urban taxpayers. This comes at a time when almost all observers feel our nations' cities are short of money and long on problems. Almost every city is undertaking as best as it can to treat its urban decay.

To take one facet of the entertainment business, widely enjoyed, and grant monopoly status which when exercised extorts money from working people to build luxury boxes that working people can't afford to sit in is, I think, unconscionable. Maybe there is a legal remedy. I do not think the taxpayers ought to have to wait for that. This is a national problem that affects many cities and we hear about more movements each passing day. I think Congress ought to address this problem. I hope you do.

HOUSTON OILERS,
Houston, TX, July 12, 1995.

PERSONAL AND CONFIDENTIAL

The Honorable Bob Lanier
Office of the Mayor
901 Bagby, 3rd Floor
Houston, TX 77001

DEAR MAYOR LANIER: It has now been more than two years since our initial meeting where I expressed the necessity for a new stadium in Houston. I told you then that the Oilers would not remain at the Astrodome after the expiration of our lease following the 1997 season.

During the interim I have expended almost \$1 million dollars on feasibility studies, economic impact reports, architectural and design work, financial consultation, marketing, legal and lobbying expense both in Houston and Austin.

In a little more than two years our lease with Astrodome USA expires and it is extremely important that I learn from you now whether you intend to take a leadership role in developing a business and political coalition to address the Oilers' stadium situation and provide solutions which will enable us to continue to remain competitive on the field and financially viable off the field.

The most recent projections on new stadiums and arenas which will become operational in the next five years only serves to confirm the judgment we made several years ago in determining the need for a new stadium designed for football. Almost

daily there are newspaper reports on new stadiums being planned for cities throughout the U.S., but not in Houston.

It is now clear that if the Oilers were to remain in the Astrodome, the following facts would exist shortly after the turn of the century:

1. The Oilers would be playing in the second smallest stadium in the NFL.
2. The Oilers would be one of the two NFL teams sharing a stadium with Major League Baseball.
3. The Oilers would be playing in the fourth oldest stadium in the NFL.
4. The Oilers would be the only NFL team playing in a stadium designed for baseball.
5. The Oilers are, and would continue to be the only NFL team playing in a stadium controlled and operated by the owner of a competitive major sports franchise.

The sum total is that the Oilers would be relegated to a vastly inferior position in the NFL and it would no longer be possible for us to avoid losing money regardless of how fiscally conservative the team was operated.

No prudent businessman, regardless of the industry, would allow a major asset to be placed in such an uncompetitive and financially disastrous position.

I remain optimistic that you will demonstrate leadership and vision in addressing the stadium problem and I will look forward to hearing from you in the very near future with your response.

With best personal regards, I remain
Sincerely,

K.S. "BUD" ADAMS, JR.
Owner/President

HOUSTON OILERS,
Houston, TX, July 18, 1995.

PERSONAL AND CONFIDENTIAL

The Honorable Bob Lanier
Office of the Mayor
901 Bagby, 3rd Floor
Houston, TX 77002

DEAR MAYOR LANIER: It comes as no surprise to me that I've not received any acknowledgment of my letter to you of July 12, 1995. You have consistently displayed a cavalier attitude toward any sense of urgency in resolving the Oilers' stadium situation.

Accordingly, I am serving you with formal notice that I'm establishing a firm deadline of Friday, July 28, 1995 for you, in your capacity as Mayor of Houston, to respond in writing that you will either not support the construction of a new stadium for the Oilers, or your written commitment to the following:

1. Your unqualified public support of construction of a new stadium for the Oilers to be built and ready for occupancy by the 1999 NFL season.
2. Your written commitment that the City of Houston will enter into negotiations with representatives of the Oilers no later than August 15, 1995.
3. Agreement to a November 15th deadline for reaching a stadium agreement.
4. Your understanding that in the event an agreement for a new stadium requires a public referendum the cost of financing a media campaign to secure passage of the agreement will be the sole responsibility of the private sector.

I want to emphasize that the conditions herein are non-negotiable and I trust you will assign top priority to this issue.

Regardless of any opinions to the contrary, since our initial meeting in June of 1993 I have dealt in absolute good faith with you and the public officials of Texas. The results of efforts are well documented.

The economic forces which impact professional sports, and particularly the NFL, have changed dramatically in two years. You and others have chosen to ignore the stadium issue while public officials throughout the U.S. have responded in positive and affirmative manners with solutions to stadium and arena problems.

There is no more vivid example of the looming financial crisis faced by the Oilers than the signing over the weekend of Kerry Collins, the Carolina Panther's number one draft pick quarterback. The new 72,000 seat stadium rising in downtown Charlotte provides Carolina with significant stadium revenue streams enabling them to make lucrative long-term commitments which would be fiscally imprudent and unwise for the Oilers.

We must sign Steve McNair and based on the realistic projections of the Oilers' revenue it will be done with great difficulty. I'm confident we will sign McNair, but

confident that without a new stadium we will be able to continue to compete quality free agents necessary to field a competitive team.
still look forward to hearing from you on or before July 28th!

Sincerely,

K.S. "BUD" ADAMS, JR.
Owner / President.

Paul Tagliabue, NFL Commissioner

CITY OF HOUSTON,
OFFICE OF THE MAYOR,
Houston, TX, July 19, 1995.

K.S. "Bud" Adams, Jr.

1stn Oilers

0 Fannin

1stn, Texas 77030

DEAR MR. ADAMS: On returning from vacation I have read both your letters of July 12 and July 18.

I've enjoyed being a fan and supporter of the Oilers from the date that they first moved here with the AFL. I've been a season ticket holder and rarely miss a home game.

I supported the Domed Stadium at the time that the Oilers and Astros were its primary backers.

The Astrodome, of course, is a County facility. Currently, both the Houston Astros and the Houston Oilers are prime tenants there. Also, the Houston Livestock Show and Rodeo.

After looking at the new stadium issue during the course of about a year, it is my conclusion that the primary moving party on any new stadium should be Harris County Commissioners Court. They own and operate the Dome. Any possibility of remodeling the Dome to meet your requirements would rest with them. Any adverse effect of a new stadium on the Dome would need to be measured by them.

The opposite is true with respect to the Summit since that is a city facility. Also, in the course of discussion on a new stadium, the Oilers repeatedly advised me that it would only be feasible if connected with the Rockets. The Rockets have repeatedly and decisively said they did not wish such combination, pointing to the San Antonio experience.

Even if the Rockets were included in a new stadium financing proposal, there would still be a significant funding gap to be covered by the City. Legislation, which I supported, to close this gap through various "user pay methods", and state tax amendments did not pass this session. Therefore, we don't have a viable proposition to submit for voter approval, in my opinion.

As you know, our financing flexibility is limited. The hotel room tax is pledged to other debt service requirements. The county share of this tax, for example, is obligated to pay off the bonds which financed over \$100 million of Dome renovations during the 1980's. That is one reason why we don't have the financial flexibility available to some other communities.

I have talked to Judge Robert Eckels and he said that he would be receptive to talking with you.

I hope that you are able to sign McNair and he leads the Oilers to the Super Bowl.

Regards,

BOB LANIER,
Mayor.

THE NATIONAL FOOTBALL LEAGUE,
New York, NY, October 29, 1986.

Mayor Kathy Whitmire

City of Houston

P.O. Box 1562

Houston, TX 77251

DEAR MAYOR WHITMIRE: It has been brought to our attention that Harris County Commissioners will be asked early next year to approve a \$60 million plan to expand and renovate the Houston Astrodome.

As you know, the current Astrodome capacity of less than 48,000 places it last among the 28 facilities in which NFL regular season games are played, some 16,000

below the median in the NFL, and well below the minimum figure needed to qualify a facility to serve as a potential host of a Super Bowl game.

This is our assurance that a firm capacity of 68,279, including auxiliary seating as contemplated, would be very adequate for a future Super Bowl site. Only one domed facility in which NFL teams play, the Silverdome in Pontiac, Michigan, exceeds that figure.

We would strongly endorse the planned expansion and renovation as outlined to us.

Sincerely,

PETE ROZELLE,
Commissioner.

USCM Policy Resolution
As Adopted on January 26, 1996

By: Mayor Bob Lanier, Houston
Mayor Michael R. White, Cleveland

PROFESSIONAL SPORTS FRANCHISE LOCATION AND THE PROTECTION OF LOCAL
GOVERNMENTS AND TAXPAYERS

1. WHEREAS, a total of 104 professional major league football, basketball, baseball and hockey teams are currently located within, and supported by, the citizens, fans and taxpayers of 45 American cities; and
2. WHEREAS, many professional sports teams are currently seeking to relocate to other cities or communities and others are rumored to be interested in relocating; and
3. WHEREAS, in order to attract or retain a professional sports franchise, cities are required to make substantial commitments of scarce public funds on a long term basis; and
4. WHEREAS, cities faced with the possibility of the relocation of a professional sports team are compelled to compete with cities desirous of obtaining a franchise, and all are required to make difficult financial decisions; and
5. WHEREAS, a balance must be established between the private interests of team owners to maintain a profitable business and the public interest of the various communities to enjoy the direct and indirect benefits of having a professional sports franchise; and
6. WHEREAS, it is essential to restore some stability to professional sports and preserve its integrity by ensuring that such leagues have the ability to enforce their own rules and the obligation to follow a set process before the relocation of a team is permitted to occur; and
7. WHEREAS, there is a high level of public interest in and support for professional sports for a variety of social, economic and political reasons, and Mayors desire to be responsive to the needs and demands of the public in this regard.
8. NOW, THEREFORE, BE IT RESOLVED that the United States Conference of Mayors endorses and supports federal and state legislation, as well as litigation where appropriate, that will protect the interests of the public, local taxpayers, fans and units of local government in those communities currently supporting, or attempting to attract, professional sports teams; and
9. BE IT FURTHER RESOLVED that any federal legislation addressing the issue of professional sports team relocations, including public financial or other support, include, at a minimum, provisions:
 - A. Requiring the leagues to adopt objective standards and criteria governing the relocation of professional sports teams that take into account the business interest of the owner and the public interest of the community; requiring the leagues to base relocation decisions on their set criteria; and providing the leagues with the ability to enforce their own rules; provided that the question of whether the league is following its own rules is subject to reasonable judicial review.
 - B. Requiring that the public interest component of the league's relocation criteria include consideration of fan loyalty, community support, and bona fide offers to purchase a team and retain it in the existing community.
 - C. Requiring teams that intend to relocate to give a community adequate notice, and further requiring that, during this period, the league hold public hearings on the proposed relocation.
 - D. Assuring meaningful protection to those cities or units of local government with existing stadium or facility leases with professional sports teams to pre-

vent the loss of protection afforded such leases and requiring that any relocation decision by any professional sports league or similar organization be based, at least in part, upon consideration of the status of the lease of the city which is to lose its team, or the status of any other legal devices that may affect such relocation.

E. Allowing the use of public ownership of teams similar to the local ownership of the Green Bay Packers.

F. Requiring any professional sports league or similar organization to provide a city or community from which a profitable team has relocated the first option on any expansion the league would pursue exclusive of any expansion fees.

ISCM Policy Resolution

As Adopted on January 26, 1996

by: Mayor Richard M. Daley, Chicago

PROTECTION OF TAXPAYERS IN THE EVENT OF SPORTS TEAM RELOCATION

WHEREAS, many professional sports teams are currently seeking to relocate to other cities or communities; and

WHEREAS, in many cities public financial support, such as publicly financed playing facilities, special tax treatment, foregone revenue and other forms of public assistance, has been used to attract and retain teams; and

WHEREAS, American cities have spent more than \$1 billion building or renovating stadiums and arenas for professional sports franchises; and

WHEREAS, a number of cities are in various stages of completion of major stadium renovation projects with a total value of more than \$475 million; and

WHEREAS, professional sports teams have benefited, directly or indirectly, from this public assistance; and

WHEREAS, taxpayers have provided this assistance in reliance on the team's commitment to the community;

NOW, THEREFORE, BE IT RESOLVED that if a team leaves a community prior to the expiration of a stadium lease, or breaks an agreement with a state or local government with respect to use of a facility, that team should retire the proportionate balance of any public debt previously created or incurred, and should repay the proportionate share of any public assistance granted by public entities for the benefit of that team.

BE IT FURTHER RESOLVED that failure to repay should result in the imposition of penalties under federal law. Options for such penalties might include imposition of a federal excise tax equal to three times the public assistance provided which would be rebated to the public entity; loss of tax advantages such as moving expense deduction, executive compensation deduction, deduction for ticket prices and sky boxes.

Mr. FIELDS. Thank you, Mayor. The Chair now recognizes the Honorable Jane Hague, Chair of the King County Council. One of our outstanding members, Rick White, wanted to introduce you and when he returns. We will give him that opportunity, but if you would at this point proceed.

STATEMENT OF JANE HAGUE

Ms. HAGUE. Thank you, Mr. Chair. It is a pleasure to be in the other Washington and share our experiences with you from the Northwest on professional sports.

In the 2 years that I've been on the King County Council, I've spent an inordinate amount of time dealing with sports franchises, our stadium, the new Mariners' baseball stadium, threats to leave town, most recently by the owner of the Seattle Seahawks.

This particular scenario is repeated in courthouses and city halls around the country. The reason that we are here today is because too many cities around the country have NFL standing for "not for long in this town." Seattle and King County have a long history with franchise movement. We lost a baseball team in the 1970's.

We sued. Then Senator Slade Gorton got an expansion team and we were back in the big leagues, and that particular experience is not unlike what the city of Cleveland has just gone through.

Most recently, Ken Behring pulled the moving vans up to the Seahawks' training facility in Kirkland, a city that I represent, packed up his belongings and set off for Southern California. The reason, he said, was to avoid earthquakes in Seattle. Once again, we sued. Faced with a lawsuit and pressure from the Commissioner of the National Football League, Behring did return to Seattle, and with the help of local business leaders like John Nordstrom, Behring has sold an option to purchase the team to Paul Allen, a co-founder of Microsoft.

Interest in season tickets has gone from almost non-existent to extremely high and we look forward to a great relationship with a new local owner.

In our experience, for Congress to consider in legislation that has been critical to us, two things are important. First of all, local ownership. It was owners from outside the community that tried to move both the Mariners and the Seahawks. The new local ownership of both teams are committed to being in Seattle.

Two, a strong stadium lease. As operators of the Kingdome, we have a strong legally binding commitment with the teams. In the case of the baseball team, Mariners' owner, Jeff Smulyan, was required to offer the team for sale to a local owner before he tried to leave town. This allowed others in the community to step forward and save the team. In the Seahawks' case, our lease has a specific performance clause that requires the team to play its games in the Kingdome. It recognizes that money cannot replace a team.

I reviewed H.R. 2740 and would like to offer some specific comments on the bill in just a moment. In addition, I have reviewed Senate Bill 1439 and its companion measure, H.R. 2699. The measures all have common themes and language and I would like to make the following specific comments regarding all of these bills.

First of all, I support granting the leagues a limited exemption to antitrust laws for the purpose of determining where the franchises will play. Baseball's antitrust exemption was an important factor in keeping the Mariners in Seattle and the Commissioner of the NFL has played a very positive role in our situation with the Seahawks. An antitrust exemption would assist the NFL in stopping a rogue owner who simply determines it is time to move, loads up equipment and is gone.

Second, it is important that Congress recognize that communities have more than just an emotional tie to teams. We make hundreds of millions of dollars in investments that make it possible for the owners to operate. In addition to the stadium, the public pays for roads, highways, off ramps, parking lots, structures and basic infrastructure that are needed to operate large public gathering places.

The community's bonded indebtedness can go on long after the team has left. Nothing should preclude a local government that owns a stadium from enforcing its lease with a professional sports team. It is our strong leases with the Mariners and the Seahawks that have kept those two teams in Seattle. The criteria that is

established for considering the movement of franchises should not supersede local contracts and agreements.

Fourth, I am concerned about the rather vague language in the bills describing what is called the adequacy of the stadium as criteria for moving. The Kingdome, when it was built, was precisely what the NFL and Major League Baseball requested. We have maintained it as a first class facility as required by our lease. Simply because another community has a new and better stadium should not be a criteria for determining that an older stadium with less bells and whistles is inadequate.

I believe the strongest provision you can make to keep an owner from attempting to leave is require that the team first be offered to a qualified local buyer at a fair market value determined by an independent appraiser. It worked in Seattle. I believe it can work nationwide. It allows a community to step forward, make the commitment to keep a team. It allows a local owner to step forward and keep that team. Right now, owners risk very little when they shop their teams on an open market.

In words that we can all understand in this room, the sale to a local owner provision amounts to a community veto over an owner who is playing one community against another.

The provision is the main reason the Seattle Mariners are still playing in Seattle and we have done essentially the same thing to save the Seahawks.

H.R. 2740 imposes the Cleveland solution on the NFL and other Leagues as only a solution when a team moves. We were not interested in a solution that would give us a team a few years down the road.

Mr. FIELDS. Ms. Hague, if I could ask you to summarize. Your testimony, along with all the other panelists', will be included in their entirety in the record.

Ms. HAGUE. Again, we would just like to say that we would like to show the importance of a strong lease, local options and keeping the ability to sell to a local buyer.

Thank you for your leadership on this issue and we look forward to working with you.

[The prepared statement of Jane Hague follows:]

PREPARED STATEMENT OF JANE HAGUE, CHAIR, KING COUNTY COUNCIL

I'm Jane Hague, Chair of the Metropolitan King County Council and a hostage of professional sports.

When I ran for office, I wanted to tackle the difficult issues faced by our community.

- Improving our economy and our environment.
- Making certain our communities are safe and people who commit crimes are punished.
- Improving our roads and increasing mass transit.

While I've gotten to work on those important issues, I've also spent an inordinate amount of time dealing with professional sports franchises.

I have reviewed HR 2740 and would offer some specific comments on that bill in a moment. In addition, I have reviewed S. 1439 and its companion measure HR 2699. The measures all have some common themes and language and I'd like to make the following specific points regarding all of these bills.

1) I support granting the leagues a "limited" exemption to anti-trust laws for the purpose of determining where franchises will play. Baseball's anti-trust exemption was an important factor keeping the Mariners in Seattle, and the Commissioner of the National Football League has played a positive role in our situation with the Seahawks. An anti-trust exemption would assist the National Football League in

stopping a "rogue owner" who simply determines it's time to move, loads up the equipment, and is gone.

2) It is important that Congress recognize communities have more than an emotional tie to the teams. We make hundreds of millions of dollars in investments that make it possible for the owners to operate. In addition to the stadium, the public pays for roads, highways, off ramps, parking lots and structures, and the basic infrastructure needed to operate large public gathering places.

3) Nothing should preclude a local government that owns a stadium from enforcing its lease with a professional sports team. It is our strong leases with the Mariners and the Seahawks that have kept those two teams in Seattle. The criteria established for considering the movement of franchises should not supersede local contracts and agreements.

4) I am concerned about rather vague language in the bills describing "the adequacy of the stadium" as a criteria for moving. The Kingdome, when it was built, was precisely what the NFL and Major League Baseball requested. We have maintained it as a "first class facility" as required by our lease. Simply because another community has a new and better stadium, it should not be a criteria for determining that an older stadium is inadequate.

While the anti-trust exemption is important, it was not the primary reason Seattle has been successful in keeping its teams. The key to our success has been local ownership. In the case of the Mariners, the owner was required by our lease to offer the team for sale to a local buyer before he could move it. When Jeff Smulyan tried to move the Mariners to Tampa Bay he had to take that risk, offering the team for sale locally. We found a local owner, (through the help of Senator Gorton) and we kept the team.

I believe the strongest provision you can make to keep an owner from attempting to leave is to require that the team must first be offered for sale to a qualified local buyer, at fair market value, determined by an independent appraiser. It worked in Seattle and I believe it can work nationwide. It allows a community to step forward and make the commitment to keep a team. It allows a local owner to step forward and keep the team. Right now, owners risk very little when they shop their teams on an open market. While we did not have that specific provision in our contract with the Seahawks, we have found a local buyer who has taken an option to purchase the team. This allows us the time to work on a public-private partnership to keep the team.

H.R. 2740 essentially imposes the "Cleveland solution" as the only solution when a team threatens to move. Our case in Seattle is decidedly different. In our case, the owner was only too happy to leave the team name and colors behind. He wanted to start fresh in Southern California with a whole new marketing scheme. For teams with a nickname specific to an area, the owner will certainly want to change the name. For example, if the Miami franchise moved to Phoenix, would they keep the name "Dolphins?" We have an emotional tie to the Seahawks, just at Cleveland does to the Browns. But it most likely is not going to stop an owner from moving.

Second, we were not interested in a solution that gave us a team a few years down the road. Our case is different from many others where the stadium lease has expired or is about to end. We have ten years remaining on our lease with the Seahawks at the Kingdome. We want the team to stay in Seattle and we have found a local owner willing to take a 14-month option on the purchase of the team. If that option does not work, the team is still obligated to play its games in Seattle, and nothing short of that is satisfactory to us.

I applaud Congressman Hoke for working to make certain that the league faces a risk if it allows a team to move. This single solution, however, may not be the best.

Seattle's History with Baseball Franchises

In the mid-1970's, the voters of our county decided to build the Kingdome. With it came the Seattle Mariners baseball team and the Seattle Seahawks football team. King County became the government that owns and operates this building and entered into a landlord-tenant partnership with our teams.

It's hard to call a period just twenty years ago, the "good old days" but Danny Kaye and Lester Smith owned the Mariners and had local business ties. John Nordstrom owned the Seahawks and was poised to expand his local business nationwide. They were thrilled to own the teams and they had a sense of responsibility to the community.

The sale of the teams in the eighties to owners from outside the area changed the face of professional sports in Seattle forever. Californian George Argyros, new owner of the Mariners, almost immediately made demands. A new lease was negotiated in 1985. Argyros received about \$19 million in concessions, skyboxes were

built, and major changes made to the stadium. Ken Behring bought the Seahawks and came to town from California. Now he wants to take the team to Southern California because he says that he is afraid of earthquakes in Seattle.

By the way, we had an earthquake earlier this month while the Kingdome was filled with fans at a Mariners game. The fans were upset. Not that the Kingdome was unsafe, but because the game was suspended. They were chanting for the teams to play ball.

I tell you this, not because Californians who own sports teams are bad. I tell you this because in our experience, local ownership is critical. When ownership is local, it has a sense of community. It is tied to the community. Local ownership is also more willing to enter into contracts that bind the team to stay where they belong. In our case, we enforced those contracts when outside owners tried to move the teams.

Baseball's anti-trust exemption has been important in keeping the team in Seattle. George Argyros of Southern California sold the Mariners to Jeff Smulyan of Indianapolis. In a few short years, Smulyan attempted to move the team to Tampa Bay. He was stopped, in part, because baseball's ownership is allowed to determine where franchises can be located. The anti-trust exemption stopped a "rogue" owner from simply picking up and moving the franchise as has happened recently in football.

But the most critical element keeping the Mariners in Seattle was a clause in the lease requiring that the team be offered for sale to a qualified local buyer. In deciding to move, Smulyan had to take the chance that a local owner or group would surface. It is because of that provision that the *Seattle Mariners* and Ken Griffey won the American League West Championship last season and Jeff Smulyan is tending to his radio stations in the mid-west. Without that provision, Seattle would be in Tampa Bay.

Football in Seattle Today

But it is football that brings us here today. A decade or so ago when the Colts moved to Indianapolis, it was done under cover of darkness at midnight. In Seattle this past winter, it was done in broad daylight in view of television cameras and sports fans trying to block the road. Some owners in the NFL, have a new brazen attitude. To them, NFL seems to mean "Not For Long" in this town.

Thanks to pressure brought by the Commissioner, thanks to the solidarity of our elected officials in Seattle, thanks to a strong lease binding the Seahawks to Seattle, and thanks to Paul Allen, the Seahawks are back where they belong. They will open the season in the Kingdome this fall. Within 14-months, we hope to work out a deal that will lead to the sale of the team to Paul Allen, a local boy who truly made good and has the sense of community to do good.

While the efforts of the NFL Commissioner are greatly appreciated, it is our lease with the team that keeps them in Seattle. We have ten years left on that lease. It also has a specific performance clause. As many of you know, you can break a lease, and simply pay damages to get out of it. In our case, the Seahawks are held by a specific performance clause. They must play their games at the Kingdome to satisfy the lease.

The language in the lease is simple and straightforward. "It is recognized that the obligations of the parties to this Agreement are unique in nature and that it may be specifically or mandatorily enforced by either party." It tells the owner, if we maintain the stadium, you have to play in it for the entire duration of the lease. Monetary compensation is not enough. No amount of money can adequately compensate us for the loss of our team.

This lease was negotiated with John Nordstrom by our County Prosecutor Norm Maleng. It was two individuals concerned about the community working out a deal that benefited the community. In the end, it stopped an absentee owner from moving the team. The lease was also negotiated at a time when it was a landlord's market. We had a major league stadium and other communities couldn't compete. Now, some cities build stadiums without a team in hopes of stealing one from elsewhere.

Seattle's Lesson

The lesson from Seattle is important. In 1970, we lost a baseball team. We sued Major League Baseball to get it back. We won. You don't have to go very far to find out why. Senator Slade Gorton led the effort to return baseball to Seattle. A team was stolen from us once. It won't happen again.

A limited anti-trust exemption will help. But it leaves the fox guarding the hen house. An owner that wants to pull a franchise out of a city should take some risk. They should be required to put the team up for sale to a local owner who pledges to keep the team in that city.

While we will have our teams, they come at a tremendous cost. The Mariners will get a new stadium. The Kingdome, a building now 20-years old, faces major renovations. When it is over, the community will spend close to half-a-billion dollars on public buildings for our sports teams and other community events. That is one-third our annual budget and we are one of the largest, most complex local governments in the country.

We have made an amazing commitment to stadiums in our community. And I want to stress that the Kingdome serves far more than just professional sports. We have large auto, car, boat, and home shows enjoyed by thousands that stimulate our local economy. The Kingdome has hosted the NCAA Final Four and other college playoff games. Reverend Billy Graham actually opened the Kingdome, and just last month, over 60,000 men attended a Promise Keepers convention held there. The Kingdome is a visible symbol of our community and is recognized nationwide.

That commitment to the Kingdome in the last fifteen years includes \$80 millions dollars in improvements and maintenance. New scoreboards, new turf, luxury boxes, sound systems, and more. That is a sign of commitment on the part of our community to major league sports and to our quality of life. Owners of teams should be bound by the commitment of the community in which they play.

If Congress wants to place a restriction on team movement in exchange for the limited anti-trust exemption, I would recommend a "local sale" provision. Teams should stay in their home towns or the owner should have to risk putting the team up for sale if they want to move. Thank you.

Mr. FIELDS. Thank you very much. Chairman Oxley would like for Professor Andrew Zimbalist and Mr. Joseph Nepi to come to the panel if they could and give their testimony at this time, so that we are a little more expeditious.

Mr. Tagliabue, we want everyone else to remain.

Mr. TAGLIABUE. Yes, I was just going to sit here.

Mr. FIELDS. First is Professor Andrew Zimbalist, Department of Economics, Smith College, Northampton, Massachusetts.

STATEMENTS OF ANDREW ZIMBALIST, PROFESSOR, DEPARTMENT OF ECONOMICS, SMITH COLLEGE; AND JOSEPH NEPI, PRESIDENT, AMERICAN SPORTS FAN ASSOCIATION

Mr. ZIMBALIST. Thank you. The NFL, NBA, NHL and Major League Baseball are monopolies. For public relation purposes, each League will contend that it is not a monopoly, they are rather just one competitor in a large entertainment industry. They are part of the entertainment industry just as are my socks, shirt and jacket part of the garment industry. They all keep me warm.

The real question from an economic point of view is whether there is meaningful price competition among these various entertainment forms.

If the San Francisco 49er's raised their average ticket prices from \$40 to \$42, will fewer people attend their games and attend the games instead of the Golden State Warriors?

If the New York Knicks raise their average ticket prices from \$40 to \$44, will fewer people attend their games and more go to the plays on Broadway? Not likely.

There is no direct competition and to use economists' jargon, the cross elasticity of demand is zero, each sports league is in a league of its own.

As monopolies, the sports leagues restrict the supply of franchises below the demand for franchises from economically viable cities, thrusting cities into competition with each other to procure or retain teams. The outcome is that some cities lose teams while others spend tens of millions of dollars to build new facilities for prospective teams.

The new facilities enable the generation of anywhere from \$10 to \$50 million in additional revenues, which go to the already deep pockets of the owners and the players. It is an income transfer from the average citizen to some of the wealthiest citizens and it is done often in the name of promoting economic development in a metropolitan area.

Since sports play such a prestigious role in a city's culture, it is sometimes difficult to come to grips with the reality that sports teams have a diminutive impact on the city's economy.

First, the average NFL team in 1994 grossed \$65 million. Compare that to the 1993 effect of buying income for the metropolitan limits of St. Louis of \$21.1 billion. The gross of an average NFL team then would account for 0.3 percent of St. Louis' effective buying income; 0.6 percent of Jacksonville's effective buying income and 0.005 percent of the effective buying income within the metropolitan limits of New York City.

Before the 1994 work stoppage, the average Major League Baseball franchise also had gross revenues of around \$65 million, while the average revenues in the NBA were approximately \$50 million and those in the NHL, close to \$35 million.

In terms of permanent local employees, sports teams employ between 40 and 120 full-time workers, along with several hundred low skill and low wage part-time and temporary stadium or arena personnel.

Second, economic studies have shown that most public stadiums and arenas do not cover their own fixed and operating costs. Indeed, using data available for 25 publicly owned stadiums and arenas for 1989, Quirk and Ford estimated an average public stadium subsidy of \$6.8 million and conservatively projected an excess of \$500 million in government subsidies to all public sports teams in 1989.

Operating in debt service deficits mean that city or State governments will have to levy additional taxes, higher taxes in turn discourage business in the area and reduce consumer expenditure, setting off a negative multiplier effect.

Third, virtually all independent economic research has confirmed a negligible economic effect from the relocation of a sports team to a city. Promotional studies done under contract with interested parties produced dozens and dozens of glossy charts and computer printouts and purport to demonstrate an impending economic boom if construction is undertaken.

Invariably, these studies have deep methodological problems. They are based on unrealistic assumptions. They inflate gross and net spending. They use sales rather than income multipliers and they ignore the powerful negative multiplier effect from higher taxes.

However, even the excessively inflated claims of these studies, even accepting these claims, it is apparent that building stadiums is not a good economic investment for a city. Consider, for instance, two recent promotional studies on the economic impact of Camden Yards, one by the State Department of Business and Economic Development and the other by the Department of Fiscal Services.

The former estimated benefits at \$110 million with 1,394 jobs created. The latter at \$33 million with 534 jobs created. Using a

modest project cost estimate of \$177 million, the cost per job created is \$127,000 or \$331,000 in these two studies. These estimates, although based on excessively optimistic assumptions, should be contrasted with the cost per job created of the State economic development program, which is \$6,000 per job.

Camden Yards furthermore benefited from being part of the Harbor redevelopment, from absorbing the Washington, DC market, from being the first example of its architectural jural, from the novelty effect of the park and from housing a very successful ball club.

The proper emphasis from this analysis is not cities should not try to attract sports teams, nor that they should never invest public funds for this purpose. Rather, the proper emphasis is twofold. First, if the city is to spend public moneys, it should be done with the understanding that it is an investment in the city's cultural life for the enjoyment of its citizens and the possible generation of civic pride.

Second, to avoid fiscal distress and possibly intensifying social tensions, it is imperative that the financing package and the lease for any future stadium or arena be fiscally prudent from the city's point of view.

Mr. FIELDS. Professor, can I ask you to summarize, please? Your statement also will be included in its entirety in the record.

Mr. ZIMBALIST. Fine. I was actually going onto talk about H.R. 2740 and what I view as some of its deficiencies. I will just list them and if people want me to talk about it later, I will do that in questions and answers.

Mr. FIELDS. That will be included in the record. That will be part of the record.

Mr. ZIMBALIST. Fine. The three areas where I find some deficiency in the bill is first of all that it excludes Major League Baseball. I don't think there is any basis for doing that. Second of all, I think there are problems in the mechanism that establishes the price for the expansion franchise and third, if the provision that allows for public ownership or city, county or State ownership, for these franchises, is to be upheld, then there has to be a modification in the NLRA for collective bargaining purposes.

Thank you very much.

[The prepared statement of Andrew Zimbalist follows:]

PREPARED STATEMENT OF ANDREW ZIMBALIST, DEPARTMENT OF ECONOMICS, SMITH COLLEGE

"I am not about to rape the City as others in my league and others have done. You will never hear me say 'If I don't get this I'm moving.' You can go to the press on that one. I couldn't live with myself if I did that." Art Modell, owner of the Baltimore Ravens, formerly Cleveland Browns, 1994.¹

U.S. team sports leagues are monopolies. As such, they maximize their profits by reducing the supply of franchises below the demand for franchises from economically-viable cities. The result is that cities are thrust into competition with each other to procure or retain teams.

The tendency of sports teams to seek more hospitable venues has been exaggerated in recent years by the advent of new stadium technology. This technology replaces the cookie-cutter stadiums of the 1960s and 1970s with single sport constructions that maximize opportunities for revenue generation from luxury suites, club boxes, concessions, catering, signage, parking, advertising and theme activities. De-

¹Quoted in First Amended Complaint, City of Cleveland v. Cleveland Browns et. al., Court of Common Pleas, Cuyahoga County, Ohio, p. 2.

pending on the sport and the circumstance, a new stadium or arena can add anywhere from \$10 to \$40 million in revenues to a team's coffers. In fact, the economics of new stadiums can be so alluring that demographically lesser cities (e.g., Memphis, Charlotte, Jacksonville, Nashville) with new stadiums can begin to compete with larger cities with older stadiums. Thus, the new stadium technology creates new economically viable cities and, thereby, exacerbates the imbalance between supply of and demand for sports franchises.

This imbalance, in turn, leads cities imprudently to offer the kitchen sink in their effort to retain existing or to attract new teams. The cities build new stadiums costing in excess of \$200 million, plus infrastructural expenditures and debt service obligations that often double the cost of the project.² Furthermore, when the state government is involved in financially supporting the effort, it generally requires the approval of parallel pork projects elsewhere in the state to secure the necessary votes in the legislature. Frequently, the stadium lease is on such concessionary terms that the city cannot even cover its incremental debt service with rent and other stadium revenues. The public ends up paying for the stadiums, only to generate millions of extra revenue that inevitably is divided between higher player salaries and ownership profits.

While this line of reasoning applies to all the professional team sports leagues, it applies most forcefully today to the NFL for two reasons. First, the NFL relies less on regular ticket sales for revenue than the other sports because each team only plays between eight and ten home games each year. Smaller cities can fill a stadium of 60,000 eight times a year with relative ease. Further, in contrast to basketball, baseball and hockey where less than 25 percent of total revenues are shared among the teams, in football this proportion rises above 75 percent. Thus, there are more potentially viable cities in professional football. Second, because NFL teams must share 100 percent of their television, licensing and marketing revenues as well as 40 percent of their gate, NFL teams have a powerful incentive to maximize stadium revenues which are not shared at all. Although it might trouble Jerry Jones and some other owners, the NFL would be well served by sharing 40 percent of all stadium revenues.

DIMINUTIVE IMPACT

It is common perception that sports teams have an economic impact on a city that is tantamount to their cultural impact. This is wrong. In most circumstances, sports teams have a small positive economic effect, similar perhaps to the influence of a new department store. First, individual sports teams are not big business. The average NFL team in 1994 grossed \$65 million. Compare that to the 1993 Effective Buying Income (EBI) for the metropolitan limits of St. Louis of \$21.1 billion. The gross of an average NFL team, then, would account for 0.3 percent of St. Louis' EBI, 0.6 percent of Jacksonville, Florida's EBI and just 0.05 percent of the EBI of the metropolitan limits of New York City. Before the 1994-95 work stoppage, the average Major League Baseball (MLB) franchise also had gross revenues of around \$65 million, while the average revenues in the NBA were approximately \$50 million and those in the NHL were closer to \$35 million. In terms of permanent local employees, sports teams employ between 50 and 120 full-time workers, along with several hundred low-skill and low-wage, part-time and temporary stadium or arena personnel.³

Second, economic studies have shown that most public stadiums and arenas do not cover their own fixed and operating costs. Indeed, using available data for 25 publicly-owned stadiums and arenas for 1989, Quirk and Fort estimated an average public stadium subsidy (net fiscal cost) of \$6.8 million and conservatively projected in excess of \$500 million in government subsidies to all professional sports teams in the same year.⁴ Operating and debt service deficits mean that city or state governments will have to levy additional taxes. Higher taxes, in turn, discourage business in the area and reduce consumer expenditures, setting off a negative multiplier effect.

Third, virtually all independent economic research has confirmed a diminutive or negligible economic effect from the relocation of a sports team in a city. For instance, Baade and Dye looked at nine cities over the period of 1965-83 and found

²The \$200 million figure may become quickly obsolete. New York City Mayor Giuliani is supporting a proposal to build a new stadium for the Yankees in mid-town on the west side for an estimated \$1.06 billion. This modest sum does not include the cost of land acquisition.

³For instance, according to the *Wall Street Journal* (March 9, 1995): "The 400 ushers and ticket-takers employed by the [Milwaukee] Brewers collectively can earn about \$300,000—one quarter of the average \$1.2 million salary for one ballplayer in 1994."

⁴James Quirk and Rodney Fort, *Pay Dirt: The Business of Professional Team Sports*, Princeton: Princeton University Press, 1992, pp. 170-171.

no significant relationship between adding a sports team or a new stadium and the city's economic growth.⁵ In fact, they found that in seven of the nine cities, the city's share of regional income declined after the addition of a sports team or the construction of a new stadium.

Baade recently updated and expanded this study to include 36 metropolitan areas over a thirty-year period (1958–87) and found that in no cases did a new stadium have a statistically significant, positive economic impact on the city's growth and in three cases it had a negative impact.⁶ Mark Rostentraub studied Indianapolis, which put forth an integrated sports development strategy in conjunction with a downtown redevelopment initiative. The city was fortunate to be able to leverage only \$436.1 million of its own funds to attract a total of \$2.8 billion in private and public monies. That is, the city paid less than one-sixth of the total bill. Rosentraub's study found that, while the number of sports-related jobs increased, sports was too small a component of the local economy to have an appreciable impact. Indeed, most of the employment growth was in low-wage services and Indianapolis' share in the total county payroll actually declined from 1977 to 1989. Arthur Johnson studied 15 cities that host minor league baseball teams and concluded that: "The economic impact of a minor league team is not sufficient to justify the relatively large public expenditure necessary for a minor league team."⁷

PROMOTIONAL STUDIES

Dozens of studies have been performed by consulting firms under contract with the affected city or team. Predictably, most of these studies have concluded that there would be a substantial, positive impact from adding a sports team. There are several methodological difficulties with these studies.

First, they do not account for or do not sufficiently account for the difference between new and diverted (or gross and net) spending. People have only so much income that they will spend on leisure and entertainment activities. If they go to a ballgame, it generally means that they are not spending the same dollars locally to go to the theater, to the movies, to a concert, to dinner, to rent a video and so on. That is, the dollar spent at the sports event usually replaces the dollar spent elsewhere in the local economy. The net spending impact is nil, or practically nil.⁸

The main source of net spending is out-of-town visitors to a ballgame. With a few exceptions, such as Baltimore or Denver, this number is usually small for professional sports teams.⁹ It consists primarily of the visiting teams and out-of-town media, and most of this will be offset by road trips by the local team and media.¹⁰ Some promotional studies have surveyed fans at a stadium to ascertain whether or not they are from out of town and, then, assumed that the entire estimated expenditures by these visitors during their stay is attributable to the sports team. Yet, the presence of the out of town visitors may be attributable to something other than the ballgame (e.g., business, cultural activities, relatives, etc.). In this case only their spending at the ballpark should be counted in the team's economic impact. Indeed, in many cases, the ballpark spending should be excluded, because these visitors would have spent their money at other venues within the city if no sports team existed. Crompton reviews several cases where visitors attending a local sporting event were surveyed and reports that half or more of the visitors were in the city for another reason.¹¹

Second, the promotional studies tend to make favorable assumptions about the size of the area being impacted. The smaller the circle around the stadium that is

⁵ Robert Baade and R.F. Dye, "The Impact of Stadiums and Professional Sports on Metropolitan Area Development," *Growth and Change* (Spring 1990), 1–14.

⁶ In one case, the presence of a new team had a statistically significant impact on the city's real per capita growth (Indianapolis). Robert Baade, *Stadiums, Professional Sports, and Economic Development: Assessing the Reality*. A Heartland Policy Study, No. 62, April, 1994.

⁷ Arthur Johnson, *Minor League Baseball and Local Economic Development*. Urbana: University of Illinois Press, 1993, p. 245. For a review of several additional studies, see John Crompton, "Economic Impact Analysis of Sports Facilities and Events. Eleven Sources of Misapplication," *Journal of Sport Management* (1995), 14–35.

⁸ Some have pointed out that the presence of a major league sports team may induce certain local residents to travel less, and, thereby, spend more of their income locally. While it would be folly to deny that some may behave in this way, it is hard to believe (and to our knowledge no one has demonstrated) that the empirical effect here would be significant.

⁹ For instance, a study performed by the Cleveland Growth Association on the economic impact of the Cleveland Browns in 1995 found that out of an average game attendance of 70,160, only 4,780 or 6.8 percent were "non-local".

¹⁰ Hosting an all-star game in baseball or the Super Bowl in football provide an additional financial fillip to the fortunate city.

¹¹ Crompton, *op cit*, pp. 27–29.

chosen as the impacted area, the greater percentage of attendees at the sports event that will be classified as out-of-town, and, hence, by assumption the greater will be the *net* spending.¹² There is, however, little reason for public policy makers to endorse such a parochial view of economic impact, unless there is a clear intention to benefit one area at the expense of another.

Third, the economic impact is often exaggerated by assuming that an unrealistically large share of executive and player salaries remains in the local economy. The more a team's owner and its players (i.e., those with very high incomes) live in and spend their income in the host city, the larger will be the economic impact. The extent to which players and their families reside in a team's host city year round will vary significantly across cities. What will be true for most professional athletes, however, is that their high incomes will be conducive to very high savings rates. These savings are likely to go to national banks, money market funds at brokerage firms, pension accounts, stocks and bonds, and, therefore, have little, if any, impact on the local economy.

Fourth, the promotional studies overstate the interconnections between the sports team and the rest of the city's economy. The greater are these interconnections, the larger will be multiplier effect. Generally, these studies use a local area multiplier for sports spending of between 1.5 and 2, though some go considerably higher. These multipliers are based on local sales, not on local income, generation. The problem with a local sales multiplier is that a sizeable portion of the value of a sale is dependent on inputs imported into the area. The local income generation will reflect that portion of the sales that remains in the area, that is, the sales multiplier is based on local value added. For example, suppose one buys a Samuel Adams beer at Yankee Stadium for \$4.50. Of this, sizeable shares go to the manufacturer in Boston, to the concessionaire, Volume Services Inc. (which is based in Spartanburg, South Carolina), and to George Steinbrenner and the other Yankees' owners. A much smaller portion goes to pay the labor cost of the concessions' worker and electricity usage at Yankee Stadium. Since Steinbrenner maintains his primary residence outside of New York City, travels widely and saves a good portion of his income and since the concessionaire probably remits most of its net sales to the home office (after paying the local personnel and other expenses), the local value added from this sale of beer is probably well below half of its \$4.50 gross value.

Further suppose that on a typical day ten percent of the crowd at Yankee Stadium comes from outside the greater New York metropolitan area and that half of this group came to New York principally to see the Yankees. Assuming an average attendance of 30,000, this means that 1,500 fans were spending new money in New York. If each of these fans spent an average of \$10 on food at the game and 40 percent of this was local value added, then the direct (first round) new money created per fan would be \$4, and among the 1,500 fans the total new money would be \$6,000. This is in contrast to taking \$10 per fan for all 30,000 in attendance and using a sales approach (considering 100 percent of spending to impact on the local economy), which would generate first round new money of \$300,000, a fifty-fold difference. Now, using the \$6,000 figure for new first round income generated, the earners of this additional income will save some and spend the rest. If we continue to assume that 40 percent of spending results in local value added and the savings rate is 10 percent, then the round two increase in local income resulting from food expenditures at the Yankee game will be \$2,160, the round three income increase will be \$777.60 and so on. The total impact, after all successive rounds of spending, will be \$9,375, this is 1.56 times greater than the first round value added or 0.625 times the gross value of first round spending¹³ by the out-of-town fans who came for the game (\$15,000). The extreme methodology used in some promotional studies would take the total first round spending of \$300,000, apply the 1.56 multiplier and conclude that there was a \$468,000 impact on the local economy from one day of

¹²The March 1996 Peat Marwick *Yankee Stadium Alternative Site Study* adopts an unusual bias in considering New York City as the local area for purposes of out-of-town expenditures but New York state as the relevant area for considering multiplier linkages. Similar to other promotional studies of its genre the Peat Marwick study obscures fundamental questions of methodology and substitutes endless numbers of computer-generated tables, intended, one supposes, to lend a scientific air to the report. The report, *inter alia*, leaves out the negative multiplier effects of higher taxes for financing construction and/or operating deficits, assumes unrealistically high prices for PSLs, club seats and suites, assumes a 50 percent increase in attendance at Yankee games to persist indefinitely, misapprehends the basic distinction between current and constant prices, along with a host of additional difficulties.

¹³This is consistent with estimates cited by Crompton of between .4 and .8 for the local multiplier (based on first round gross spending) of visitor spending in U.S. counties. Op. cit. pp. 29-30.

food sales at the ballpark. We are suggesting that the correct methodology would find an impact of \$9,375, again a fifty-fold difference.

Finally, the local area economic impact will also be dependent on the fiscal impact of building or refurbishing a stadium or arena. Promotional studies, by making favorable assumptions regarding the terms of stadium financing¹⁴ and the conditions of its lease, usually conclude that there will be a salutary financial impact on local government budgets—an outcome which rarely obtains in practice.

Indeed, since the new treatment of tax exemption for municipal bonds in the 1986 Tax Reform Act, it generally has become more difficult for stadium operations to yield a positive cash flow for the city treasury. In an apparent attempt to reduce the public subsidy to privately-owned sports teams, this 1986 reform stipulated that beginning in 1990 stadiums whose debt service costs were more than ten percent covered by private stadium revenues (e.g., rent, share of concessions or parking revenues, share of luxury box income) would not qualify for tax-exempt bond issuance. In order to meet this requirement, the pattern of stadium finance has shifted. On the one hand, private money is raised up front from the long-term, rather than annual, sale of naming, concession and pouring rights as well as from the sale of permanent seat licenses and long-term luxury and club box leases. On the other hand, teams increasingly are gifted sweetheart leases with negligible or zero rent and little sharing from stadium revenues. The 1986 reform, then, rather than shifting some of the cost on to the stadium's economic beneficiary (the team owner), has perversely done the reverse.

Depending on the assumptions made and the methodology employed, then, one can get wildly different estimates of economic impact. For instance, two studies were made about the impact of the Colts on the Baltimore economy in 1984. One study found an impact of \$30 million and the other an impact of \$200,000. The former estimate is wildly unrealistic, but even at such a level the benefits would have to be weighed against the costs of constructing, financing and possibly maintaining a new stadium.

There have been at least two promotional studies on the economic impact of Camden Yards, one by the state Department of Business and Economic Development and the other by the Department of Fiscal Services. The former estimated benefits at \$110.6 million with 1,394 jobs created and the latter at \$33 million with 534 jobs created. Using a modest project cost estimate of \$177 million, the cost per job created is \$127,000 in the first study and \$331,000 in the second. These estimates, though based on excessively optimistic assumptions, should be contrasted with the cost per job created of the state economic development program of \$6,250 per job, a typical spending/job ratio for urban development expenditures.¹⁵ Further, Camden Yards benefitted from being part of the harbor redevelopment, from absorbing Washington, D.C. (the seventh largest media market in the U.S.) by its location off the interstate in south Baltimore), from being the first example of its architectural genre, from the novelty effect of the park itself and from housing a successful ballclub.

It would be prudent both for teams and cities to anticipate that for aesthetic and economic reasons the Camden Yards/HOK design may begin to wear thin. The cookie-cutter stadiums of the sixties and seventies received enthusiastic reviews when they were built. Today they are scorned. The same fate awaits the old-fashioned ballpark design of the nineties.

Mayors, under pressure not to lose a city's historical franchise and cajoled by local contractors, unions, lawyers, hotel, restaurant and real estate interests, among other political powers, tend to look favorably upon new stadium construction.¹⁶ They invoke images of city grandeur and new corporate headquarters moving to town. While it is conceivable that some cities are on the threshold of recognition and a sports team could lift them over the hump, such an effect is highly speculative and

¹⁴See Dennis Zimmerman, "Tax-exempt Bond Legislation, 1968-1990: An Economic Perspective," *CRS Report for Congress*. Congressional Research Service. The Library of Congress, February 7, 1991.

¹⁵See Dennis Zimmerman, *Limiting Tax-Exempt Bonds for Professional Sports Stadiums*, Congressional Research Service, April 1996. A study by Deloitte and Touche of the new stadium being built for the Arizona Diamondbacks in Maricopa County for a projected \$280 million (not including infrastructural associated with parking and land acquisition) estimates that the team and stadium will generate the equivalent of 400 full-time jobs. This computes to a cost of \$700,000 per job!

¹⁶For an interesting discussion of how construction projects are viewed by different spheres of municipal employees, see Anthony Boardman, Aidan Vinig, and W.G. Waters II, "Costs and Benefits through Bureaucratic Lenses," *Journal of Policy Analysis and Management* 12 (3) (Summer 1993): 532-555.

there is no case where it has actually taken hold in a significant way. Moreover, corporate relocations rarely occur to cities whose fiscal situation is deteriorating.

To the extent that a new stadium (a) is a central element of an urban redevelopment plan and its location and attributes are carefully set out to maximize synergies with local business and (b) the terms of its lease are not negotiated under duress and are fair to the city, then the city may derive some modest economic benefit from a sports team. The problem, however, is that these two conditions rarely apply when dealing with monopoly sports leagues. Cities are forced to act hastily under pressure and to bargain without any leverage. Properly reckoned, the value of a sports team to a city should not be measured in dollars, but appreciated as a potential source of entertainment and civic pride.

TEAM RELOCATIONS AND PUBLIC POLICY

Are sports franchises, such as the Browns, Rams or Oilers, so economically troubled that they need new stadiums for their survival? Definitely not.¹⁷ Excluding the last two aberrant years in MLB, sports teams with very few exceptions are profitable or potentially profitable, indeed, well-managed franchises generally yield handsome returns to their owners.

On January 23, 1996, before the Senate Judiciary Committee, NFL Commissioner Paul Tagliabue was asked by Senator Arlen Specter why teams in the NFL required multimillion dollar subsidies annually from their host cities. The Commissioner responded that the short answer was rising player salaries. Senator Specter inquired what the long answer was because, he said, he didn't like the short answer. To be sure, municipal subsidies to NFL teams comfortably pre-date the emergence of modified free agency with salary cap in 1993. Football salaries have been in a catch-up mode over the last several years, making up for lost ground during the decades when no real free agency existed. Under the cap system, salaries will rise more slowly than revenues because stadium revenues, one of the most rapidly growing revenue sources in the NFL, are excluded from the 62 percent cap calculation.¹⁸

Generally, rising player salaries follow rising revenues and are a sign of economic success, not a cause of economic decline. Nevertheless, sports leagues have different economic characteristics than other businesses. Teams in a league compete on the playing field, but they must cooperate as business entities. Audiovox might want Motorola to go bankrupt, but the Cowboys do not desire the same fate for the 49ers. When leagues have insufficient revenue sharing among the teams or define revenue sharing too narrowly, then the drive of individual teams to maximize profits can begin to have deleterious effects on the cohesion and stability of the league.

What can public policy do about footloose franchises jilting their fans and black-mailing our cities? Some in Congress have suggested extending antitrust immunity as it pertains to franchise movements to the NFL, the NBA and the NHL. On January 23, 1996, before the Senate Judiciary Committee Commissioner Tagliabue asserted the primacy of cooperation among teams in a sports leagues and argued that a sports league is really a single economic entity. If the NFL is a single entity, the reasoning goes, then its teams are like branches in the same company and there can be no conspiracy among them to restrain trade.

Thus, Tagliabue believes that the proper judicial context for the NFL is to have an antitrust exemption, just like MLB. In the absence of a blanket exemption, he would settle happily for an exemption pertaining to franchise relocations. He believes that the tendency for clubs and cities to litigate would be diminished if this partial antitrust immunity were extended to the league. While he is probably correct that there would be less litigation, MLB's experience suggests that litigation would not disappear. There is, however, a striking irony in the fact that Mr. Tagliabue is now threatening to sue Mayor Lanier of Houston for supporting the Hoke bill, claiming it to be an act of interference in the planned move of the Oilers to Nashville and a violation of the October 1995 consent decree between the Oilers and the city of Houston. The only reason why the Mayor's exercise of free speech is con-

¹⁷ *Financial World* magazine each year puts out estimates of operating income for all the franchises in the NHL, NFL, NBA and MLB based on figures and partial information provided by ownership. Their estimates tend to be conservative. For the 1994 season, *Financial World* estimated that the Browns had an operating income of \$6 million, the Oilers had \$2.8 million and the Rams had an operating loss of \$1.8 million. However, *Financial World* estimated that the Rams had an operating income of \$5.5 million in 1993.

¹⁸ While it is true that individual teams can exceed the cap in some years by manipulating the timing of salary payments, eventually the same teams will be constrained to a tighter cap as the payments schemes catch up with them. The remaining NFL cap loophole (that is not in effect for 1999) is expected to be closed when the current negotiations for a new collective bargaining agreement are concluded.

strued as an interference is that the NFL has stipulated that its approval of the Oilers prospective move is contingent on the defeat of the Hoke bill. The representatives from Tennessee are being blackmailed by the NFL.

MLB's experience also suggests that there is another problem besides litigation and that is the financial exploitation of cities. MLB has managed over the past 23 years to maintain franchise geographic stability, but it has also managed to play the stadium extortion game most effectively. Over the past two-plus decades MLB teams have not moved, but they have used threats to move, often supported by statements from the commissioner, in order to extract extremely lucrative stadium deals. If Congress extends partial antitrust immunity to the other team sports leagues and does nothing else, it will make an already uneven playing field more imbalanced.

It is important to clarify that the 1984 decision of the Ninth Circuit Court of Appeals in the Raiders' I case did not state that sports leagues do not have a legitimate function in regulating franchise movements to promote league stability. It simply stated that the NFL's Rule 4.3 was too restrictive and it expressed concern that the league was trying to protect the Rams' monopoly in the Los Angeles market. The right of sports leagues to control franchise relocation was reaffirmed in the Ninth Circuit's 1986 decision in the Raiders' II case and the subsequent settlement between the NBA and the L.A. Clippers. To be sure, it was probably clear awareness of this judicial opinion that in 1995 led the NFL owners initially to deny the Rams' petition to move to St. Louis. It was not until a reported \$46 million was proffered to the other owners (up from the earlier spurned \$25 million) that the NFL permitted the move.¹⁹ If the NFL had immunity in this case, the Rams probably would have moved anyway, but the extortion fee may have been even greater.

The root of the problem lies in the leagues' monopoly status and the solution must attack the root. This can be done either by engendering competition or by regulating the abuse. Competition could be created by breaking up each of the leagues into two or more business entities. The leagues would be permitted to cooperate in setting playing rules and schedules, but not in setting their business practices. In competition, each league would attempt to occupy all the viable cities available before their rival, and the supply and demand situation would balance out.

Regulating the abuse could take several forms. There are two bills before committees in the House of Representatives (H.R. 2699, hereafter the Stokes bill,²⁰ and H.R. 2740, hereafter the Hoke bill) that attempt to deal with the franchise relocation issue. Each bill extends partial antitrust immunity to the leagues relating to franchise relocation, but each bill also recognizes the need to circumscribe the discretionary power of the leagues in these matters.²¹ In addition to establishing criteria which would govern a team's ability to move, the Stokes bill offers a right-of-first refusal to the host city or a local investor to buy the team. The bill stipulates that local government would have the right to own a major league team, an opportunity that has always been denied by the sports leagues. The first-refusal provision in Stokes, however, carries little enforcement power. This is because the bill leaves the franchise price open to negotiation between the existing and prospective owner. Under these circumstances, the existing owner will want a price for the team commensurate with its value in the new city. Since the owner wants to move, the new city is by definition more attractive, either by virtue of its demographic characteristics or a new stadium with favorable lease. Usually, these factors can increase the value of a sports team by tens of millions of dollars. Thus, the Stokes bill does little more than give the right to a prospective local owner to buy an asset for substantially above its value in the local market. It will offer little protection to the existing host city.

¹⁹ On January 23, 1996, before the Senate Judiciary Committee Commissioner Tagliabue stated that the reason the Rams were allowed to leave Los Angeles was because Rams filed a triple-damage antitrust suit. It is hard to believe that the NFL owners did not anticipate such a suit before their initial decision. Further, if the antitrust suit was the sole motivation for permitting the move, why did the relocation fee jump by over \$20 million? Tagliabue also indicated that a disproportionate share of this relocation booty was given to the NFL's low revenue teams. While this is a laudable use of the funds, it is still a payment to the NFL owners. Presumably, the greater use of relocation fees to aid low revenue teams obviates the use of other league revenues for this purpose. In any event, it would make sense for the Congress to request details on the distribution of relocation fees and new revenue sharing initiatives in the NFL.

²⁰ Senator John Glenn has introduced a companion bill to H.R. 2699 in the Senate.

²¹ Senator Strom Thurmond's bill, the "Professional Sports Antitrust Improvements Act of 1996," extends partial immunity for relocation issues, but it provides no countervailing mechanism to circumscribe the potential abuse from granting the monopoly sports leagues this additional power.

The Hoke bill devises another mechanism for protecting host cities. It allows owners to preserve their "property right" to move their asset where they desire, but it allows for a vacated city to obtain an expansion team within a three-year period. The Hoke bill also grants the sports leagues limited antitrust immunity for franchise relocations, but it circumscribes this power by requiring the leagues to provide expansion teams to the bereft cities. The leagues, thereby, will have a strong incentive and the muscle to limit team movements. The incentive comes from the fact that the league is allowing an individual owner to appropriate the extra value of a new city and stadium, while the league is left with a required expansion to a less desirable city (the previous host city presumably has less market value since the owner wanted to move the team).

If passed, the Hoke bill would be the first legislative act to regulate the monopoly privilege and abuse of fans and taxpayers by the professional sports leagues. I urge legislators to support it. There are, however, three areas where I believe the bill could be strengthened. First, there is absolutely no justification for excluding Major League Baseball from the protection provisions in this bill. If the Congress interprets present case law to mean that there is a blanket exemption for MLB, then excluding baseball from the provisions of this bill constitutes a legislative endorsement of this anomalous exemption. Legislators might want to review the August 1993 opinion of district court Judge Padova in *Piazza et. al. v. Major League Baseball*, wherein Padova interprets the 1972 Supreme Court in *Flood* to limit baseball's exemption to the reserve clause. Moreover, several host cities in baseball are currently being threatened with the exodus of their team and in the case of New York there is discussion about investing \$1 billion for a new stadium for the Yankees at the West Side Rail Yards in Manhattan. Host cities in baseball need the protection of the Hoke bill as much as those in the other sports.²²

Second, Section 4a of H.R. 2740 sets a price for a city's franchise recovery to be equal to the price of the last league expansion team. The difficulty here is that virtually all expansion sites have new facilities with high revenue generation potential. A new facility makes it possible for the owner to meet the league's exacting expansion franchise fee. A team in an existing city will not generally be worth nearly as much as the expansion team, because the existing host city will not have a new facility. This will be true almost by definition, since it is almost certainly the reason why the owner wanted to move the ball club in the first place. Thus, for the bereaved host city to find an investor willing to pay an expansion fee price, the city will have to provide a new facility. A superior protective mechanism would provide for the recovery price to be set by an arbitration procedure which determined the value of a franchise in that city under existing conditions.

Third, since the bill provides for the possibility of city, county or state ownership of sports teams, Section 8 should be modified to allow for the amendment of the NLRA to cover collective bargaining for employees of public employers in sports leagues.

Mr. **FIELDS**. Thank you very much. Mr. Joseph Nepi, President of American Sports Fan Association. Mr. Nepi, you will be recognized for 5 minutes and we will ask that you summarize your statement also and that your statement will also be included in its entirety in the record.

STATEMENT OF JOSEPH NEPI

Mr. **NEPI**. Thank you, Mr. Chairman. On behalf of the American Sports Fan Association and the multitudes of fans throughout this country in all sports, we as fans are encouraged and appreciate the opportunity to have the fans represented here today. It is a rare opportunity indeed.

I would also like to thank Mr. Lanier for considering the fans in your statement.

One thing I would like to say before getting into the formal statement is this; I have an opportunity on a daily basis to communicate

²²Although it is difficult to imagine that the fledgling Major League Soccer will begin to threaten U.S. cities in the near future, it would be prudent to include all professional team sports leagues in this bill.

with fans' organizations for all sports in all cities throughout the country.

We are rapidly becoming individuals of concern over the sports industry to one of complete apathy, and these are the implications I am getting. Paramount and most alarming, and whether this is real or perceived, fans are becoming to believe that it is deteriorating as a positive influence on the youth in this country. I would like the board members to take that into consideration when you deliberate.

The American Sports Fan Association, ASFA, is a non-profit organization. We are concerned with consumer rights in professional sports. Under present conditions, franchise relocation decisions are made by professional leagues and owners with no effective recourse for the consumer in the affected communities.

The National Football League, through the actions of its Commissioner and its owners, has illustrated the need for legislative actions: (1) in empowering professional sports leagues to enforce commercially reasonable franchise relocation standards without the fear of violating antitrust laws; (2) for providing for reasonable advance notice of a proposed franchise move, so that the affected communities, including taxpayers and the fans, not just the government representatives responsible for their direct negotiations with the team involved, have an adequate opportunity to respond to the proposed move; and (3) provide a legal framework so that disputes concerning the application of each league's relocation standards and the commercial responsibility of the standards themselves may be adjudicated.

ASFA believes that H.R. 2740, the Fan Freedom and Community Protection Act, the bill, would address those concerns.

With the NFL as a prime example, it is critical that communities not be pitted against each other to bid for the status of home to a Major League franchise. The principles of section 4 of the bill, relating to the expansion under certain conditions, are essential to assure that no viable market will be without a team, if it has the desire, has demonstrated the ability to support a Major League franchise.

To protect the economic interest of a team owner, ASFA would suggest the following minor changes to section 4: (1) that the franchise fee pay for the last expansion team prior to the expansion mandated under section 4, be the minimum bid required from the qualified investor; (2) that an auction process with sealed bids be permitted, so that multiple qualified investors could participate; and (3) that appropriate government officials may have the 25 mile rule, thereby preventing the mandatory expansion clause from being triggered, if the relocation is within the same State and is less than 50 miles from the present location.

In addition to supporting H.R. 2740, ASFA urges that this committee and its members support a full scale investigation by the Federal Trade Commission of economic concessions demanded by sports team owners in stadium leasing and financing arrangements, and two, ticketing pricing structures used by professional sports teams, especially permanent seat licenses. The bill would reduce but not eliminate the potential for cartel pricing by team own-

ers. Pricing concerns will persist whenever the demand for franchise exceeds each League's self limited supply.

That concludes my statement and I thank you very much.
[The prepared statement of Joseph Nepi follows:]

PREPARED STATEMENT OF JOSEPH NEPI, PRESIDENT, AMERICAN SPORTS FAN ASSOCIATION

The American Sports Fan Association ("ASFA") is a nonprofit organization concerned with consumer rights in professional sports. Under present conditions, franchise relocation decisions are made by professional leagues and owners without effective recourse for consumers in the affected communities.

The National Football League ("NFL"), through the actions of its Commissioner and its owners, has illustrated the need for legislation (i) empowering professional sports leagues to enforce commercially-reasonable franchise relocation standards without fear of violating antitrust laws, (ii) providing for reasonable advance notice of a proposed franchise move, so that the affected communities (including taxpayers and fans, not just the governmental representatives responsible for the direct negotiations with the team involved) have an adequate opportunity to respond to the proposed move, and (iii) providing a legal framework so that disputes concerning the application of each league's relocation standards (and the commercial reasonableness of the standards themselves) may be adjudicated.

ASFA believes that H.R. 2740 (The Fan Freedom and Community Protection Act; the "Bill") would address those concerns. With the NFL as the prime example, it is critical that communities not be pitted against one another to bid for the status of "home" to a major league franchise. The principles of Section 4 of the Bill (relating to expansion under certain conditions) are essential, to assure that no viable market will be without a team if it has the desire and demonstrated ability to support a major league franchise. To protect the economic interests of team owners, ASFA would suggest the following minor changes to Section 4: (i) that the franchise fee paid for the last expansion team (prior to the expansion mandated under Section 4) be the minimum bid required from a qualified investor, (ii) that an auction process (with sealed bids) be permitted so that multiple qualified investors could participate, and (iii) that appropriate government officials may waive the 25-mile rule (thereby preventing the mandatory expansion clause from being triggered) if a relocation is within the same state and is less than 50 miles from the present location.

In addition to supporting H.R. 2740, ASFA urges this Committee and its members to support a full-scale investigation by the Federal Trade Commission of (i) economic concessions demanded by sports team owners in stadium leasing and financing arrangements, and (ii) ticket pricing structures used by professional sports teams (especially, Permanent Seat Licenses). The Bill would reduce, but not eliminate, the potential for "cartel" pricing by team owners. Pricing concerns will persist whenever the demand for franchises exceeds each league's self-limited supply.

Mr. OXLEY. Thank you. That concludes the testimony. I would like the other witnesses, if they could, to come forward for the question and answer period, if we can find some space.

Let me start by recognizing myself and ask the first series of questions.

Mr. Tagliabue, in your testimony, you describe a legal system run amuck, with excessive damage awards and continuing threats of protracted litigation. At this point, under what circumstances do you think the NFL would try to prohibit a relocation, and what are the long term repercussions to the sport and its fans if no reforms are enacted?

Mr. TAGLIABUE. We have taken steps to limit them where we felt that the treble damage exposure was not a back breaker.

Mr. OXLEY. Was that a legal decision or a political decision?

Mr. TAGLIABUE. It was a legal decision. We are litigating right now with the Raiders in Los Angeles to seek to get a declaratory judgment as to our rights under the antitrust laws to restrain movement of the Raiders' franchise.

We are litigating in New York, a case has been filed against us because I told the owner of the New England Patriots that I would not support a move of the Patriots from New England, so he sold the team and then sued us, said that my action was illegal under the antitrust laws.

Mr. OXLEY. What is the status of that case?

Mr. TAGLIABUE. That case is pending in the Federal Court in New York. We have moved to dismiss it and for judgment on various grounds but it is still pending.

We feel there are three elements of the current law which really chill your ability to take a stand and test your rights. The first is the punitive damage feature of the treble damage provision of the antitrust laws. The second is the likelihood that these cases will be litigated in an interested venue and the third is the fact that under current statute of limitations, you can wait for 4 years until you file a damage claim, so you don't get a timely resolution of your rights.

Mr. OXLEY. Under your second point, in terms of venue or forum shopping, and I assume that is what you are referring to, does the defendant, in this case, the National Football League, have the ability to remove a trial to a Federal Court?

Mr. TAGLIABUE. We tried to remove the Raiders' case out of Los Angeles and were unable to do that and had to try it in the community which was seeking to attract the team. Whether you would get other rulings from other courts, I would say is questionable.

Mr. OXLEY. Do you think that the ability, at least on paper, to move the venue to a Federal Court is at least some protection?

Mr. TAGLIABUE. No, because through our experience in the Raiders' case, I don't think the arguments you could make under current law for a transfer of venue have proven to be that effective in these kinds of cases.

Mr. OXLEY. What about the Cleveland case? As I understand it, the initial lawsuit was filed in the Common Pleas Court in the County of Cuyahoga. Is that correct?

Mr. TAGLIABUE. The city filed to enforce the last 2 years of the lease in a State court in Cuyahoga County, yes, I believe so. The city of Baltimore in the meantime filed a suit in Baltimore in Federal Court for antitrust damages. We had two different sets of litigation to consider.

The Baltimore case was the one where we were a party defendant. We were not a party as the league to the Cleveland litigation.

Mr. OXLEY. The defendants in that case were Art Modell and the Cleveland Browns football team?

Mr. TAGLIABUE. The defendants in the Cleveland case were essentially the Browns and the Cleveland Stadium Corporation, which was the wholly owned stadium company.

I think there have been revisions in a number of the bills that would provide for a neutral venue. Essentially, in some of these disputes, we are a stakeholder caught between two cities or two States, each seeking favorable venue in the Federal court system.

Mr. OXLEY. We have some interesting comparisons in my home State. We have Cleveland, which lost their football franchise to Baltimore, and then we have Cincinnati, that was at least concerned that the Bengals and perhaps the Reds would both leave

the Queen City. Then the electorate voted, I think, 60-40, to support building not just the plebe site but in fact in support of a tax increase, to build not just one but two stadiums, which is, I think, remarkable in a pretty conservative community.

I am wondering if I could ask each one of our witnesses if (a) they are familiar with that, and (b) what it says about where we are today in professional sports. It does seem to me somewhat of a contrasting kind of a situation in those two major cities in Ohio.

Mayor Lanier?

Mr. LANIER. I think when Cincinnati voted, they had already seen the Cleveland team move, so that kind of accentuated the risk to the Cincinnati voters. I think when Modell moved out of Cleveland, as I understand the situation, they were really in the process almost of giving into his demands when he saw a better deal in Baltimore and just put Modell more on the line. They didn't necessarily hook up their trailer to his back door, but he sort of left out of Baltimore.

I don't have any objection to where the public approves of it. I do have an objection to the monopoly existing so that the deal submitted to the public bears those monopoly characteristics.

Mr. OXLEY. Some would say that the Cincinnati voters were—some would say this, I wouldn't—some would say they were blackmailed essentially.

Mr. LANIER. Yes, they told them they were going to move to Cleveland. That outraged them.

Mr. OXLEY. Which really would raise the hackles of Queen City.

Mr. LANIER. It is not like ordinary business. If they can make money in your city, they will come in and make money at your place.

Mr. OXLEY. Mayor Bredesen?

Mr. BREDESEN. I guess having just spent some time with the Mayor of Cincinnati talking about this, I think it would be difficult to call that blackmail. When you submit to the public for a vote, a public which is much broader than the people who specifically attend football games, and you get those overwhelming votes, as happened in Cleveland, as is just within the last week and a half happened in Nashville, it underlines for me that there is a much broader interest than the simple fans having these facilities in the community, and that communities, when they consider the alternative uses of local funds, which is what they are, frequently come down on the side of they wish to have public facilities in which Major League sport teams can play.

As I tried to say in my testimony, I don't think there is a better way of allocating local funds than asking local elected officials and asking through the referendum process, local people to vote on those. That seems to me to determine the answer.

Mr. TAGLIABUE. I think a very important thing in these votes is to understand what people are voting on. With the privatization of at least a major piece of the cost of building these stadiums, which is a phenomenon of the 1990's, there are at least six different levels of funding in most of the stadium packages that are being presented.

One is the team owner contribution, which was present in Cincinnati, which was a very positive factor in terms of the public re-

action. No. 2 is the visiting teams. In our League, the visiting teams forego a share of their income from the games and put it back toward stadium construction debt service. No. 3 is the business community, which is where we get into the seat licenses and club seat premiums, which are as I said before, just a form of private sector user fee, which is in lieu of taxes. No. 4, five and six are the public sector funding, which is city, State and county.

In Ohio, on both the Cleveland arrangement and the Cincinnati arrangement, it was at all three levels. There was a 15 percent contribution from the State and then a proportional contribution from the other two levels of government.

If you can get that type of a package and it is presented and negotiated in a fair way, then I think the outcomes can be as they were in Nashville and Cincinnati, with the public.

In Tampa, we had the other experience, where the entire or a big part of—the owner was going to put about 45 percent of the cost of the stadium. The public sector piece was very heavily dependent on a car rental tax, and that was opposed by the hotel and travel industry in Florida and was voted down, failed of enactment at the State legislature, which had to approve that piece of it. Now they are back to the drawing board trying to re-do the piece.

I think the key is in the current environment to have a fair and balanced package where the benefits as well as the burdens are adequately spread across everyone who is involved in the decision-making process.

Mr. OXLEY. Mr. Nepi?

Mr. NEPI. Yes, Mr. Chairman. In regard to your question, the fans have the attitude that they are the consumer and they are using appropriated funds, their funds, and they are becoming more and more priced out of the market.

As far as the situation in Ohio, the ASFA was present in both those cities and also in Houston during those dilemmas. What we foresee in the future is the possibility of pitting two major cities in one State against another for a franchise. I could just imagine the dilemma that would have for the Governor of the State. He is going to be between a rock and a hard place, so he is not going to be able to negotiate without detracting any of his voters.

If you are going to use appropriated funds and not have any representation and not be priced out of the market, the only other recollection I have to that is some angry folks threw some tea in the Boston Harbor.

Mr. OXLEY. Mr. Nepi, you will recall the initial controversy over the Jacobs Field, and the vote that occurred in Cleveland to raise, I think it was sin taxes, wasn't it—booze and cigarettes?

Mr. NEPI. That is correct.

Mr. OXLEY. Let me ask you this; did you have a position on that particular issue?

Mr. NEPI. As far as the tax goes?

Mr. OXLEY. Yes.

Mr. NEPI. We are opposed to any appropriated funds being used for private industry.

Mr. OXLEY. You oppose the tax to build Jacobs Field essentially?

Mr. NEPI. Not necessarily using appropriated funds to build it but without having any representation to the people that are paying those taxes.

Mr. OXLEY. In this case, of course, there was a vote on it. It just occurred to me that there were several folks, prominent folks, including our friend, Lou Stokes, who opposed that tax bitterly; who now, as far as I know, have been just nothing but laudatory about Jacobs Field. I've been to Jacobs Field. It's a great ballpark. The Indians are sold out for the first time, I think, in Major League history. The team has been actually sold out before the season even started.

I can't hear a contrary word about Jacobs Field and about the Indians. Maybe it helps that the Indians have a winning team after 40 years. But it just strikes me as interesting that many of the same folks who were adamantly opposed to raising the sin taxes are now very happy about what ensued.

Is that a misconception for some kid from Findley who doesn't understand Cleveland politics?

Mr. NEPI. I don't think so. I think it is a case of a successful franchise being the Cleveland Indians and Jacobs Field versus they also voted on a tax a while later and lost a football team anyway. Now you have those opposing feelings in the communities now.

Right now in Cincinnati, it is the consensus of the folks in Cincinnati that probably the same thing is going to happen to them that happened in Cleveland. We voted for the sin tax and we will probably lose our team anyway or at least we are going to be pitted against another city and be possibly priced out of the market.

Mr. OXLEY. If anybody would have told me that the citizens of Cincinnati would have voted 60-40 for a tax increase down there with Marge Schott as President of the Reds, I would have said no way. Funny things happen in politics, particularly sports politics. Commissioner Bettman?

Mr. BETTMAN. Thank you. Communities make different judgments, prioritize differently all the time, so I'm not sure the difference between what happened in Cincinnati and Cleveland is all that surprising.

In fact, it may have been a message from the people in Cincinnati when they voted in favor of the new stadiums that they wanted to have new stadiums because when they went to sporting events, they wanted it to be a nicer facility. It is not always just the team that is demanding the new facilities. Sometimes the customers, the fans, the patrons, if you will, they want certain amenities. They want the facilities that they are attending these events in to be upgraded.

I'd like to make two points which I think are also responsive. One is it is not always the team that is looking for a better day that induces a move. There are situations where teams are not looking for the best deal and they will stay put just where they are.

Case in point; last Spring, the then and still for another few weeks Stanley Cup champion New Jersey Devils were in negotiations with Nashville. In addition to attracting the Oilers, Nashville is in the process of building a new state-of-the-art arena, which we hope some day to possibly inhabit with an NHL franchise.

That being the case, the Devils could have made a better, more lucrative deal in Nashville than the one they ultimately made in New Jersey, but the owner of the Devils, John McMullen, is from New Jersey. He has roots in the community. What he wanted to do was make sure that the Devils were economically and competitively viable in New Jersey.

It wasn't the case of an owner, and not all owners go after simply the best deal, what they simply try to do is make sure that their teams are competitive and viable and satisfy the fans in their community, and that is a case where the owner didn't move to take the best deal.

The second point and it goes to maybe the fact that when you try to over generalize, which I think H.R. 2740 does, and you over generalize that it is always the franchise is looking for better deals or fans want this or that, it gets you into trouble.

The forced expansion provision in the bill says that any time a franchise moves more than 25 miles, you can have forced expansion. In our case, in South Florida, that could bring about an absolutely absurd result, as follows.

Three years ago, we granted an expansion franchise to Wayne Huizanger, the Florida Panthers. They are playing in the Miami arena, which nobody disputes, neither the Miami Heat nor the Florida Panthers, is inadequate by today's standards.

They signed a short term lease, a handful of years, in contemplation of building a new arena. Mr. Huizanger, the Panthers and Broward County, Miami is in Dade and Broward is the next county over, have come to an agreement to build a new state-of-the-art arena that will in effect be jointly financed by the county with certain revenue guarantees from the club.

When this building is complete and the Panthers move to Broward County, under this bill, we could be required to then put another team back in Miami. That is a result that I don't think anybody would intend and I think one of the serious flaws in this bill.

The message that we are trying to deliver is you have to look at these situations very carefully. It is too easy to over generalize and say when one community loses a team, the way to fix the problem is just give them another expansion team.

Mr. OXLEY. Professor Zimbalist?

Mr. ZIMBALIST. I think there are many, many variables that one would have to look at to understand voting patterns, but I would suggest that in the cases that you are alluding to, Cincinnati and Cleveland, that the smaller the city, the less likely do the inhabitants of the city have other cultural alternatives and the more prominent therefore is the sports team in the local culture, first of all. Second, the more anxious the citizens of that city will be that if they lose the team, they won't get it back.

I think that both of those things are operative in the Cincinnati case, with or without any threat of a move to Cleveland.

With regard to the reaction of people in Cleveland and the economic effects of Jacobs Field and Gund Arena, I don't think that the jury is in yet on that. The Gateway Corporation had a \$28 million deficit last year. The schools are in receivership.

A very interesting thing goes along with Gateway, the Gateway Project, and that is that it is planned as part of a downtown redevelopment plan by Dick Jacobs. I think that if new ballparks or new arenas are to have a positive synergy with a local economy, it has to be that they are being produced as part of a redevelopment plan and it can't be they are being stuck onto something else, because there is a threat on the table, and I think if there is positive economic development spin offs from Cleveland, it will be because of that.

Last, I just want to say because I think it has been misapprehension all day long, and it just came through again with what Gary Bettman said with regard to Miami and Broward County, and I don't mean to defend the Hoke bill in saying this, but I think there is a misunderstanding that the Hoke bill would not require the National Hockey League to put another franchise in Miami. Somebody would have to come forward and say it's worth it to me to spend \$100 million or whatever the expansion franchise price is going to be, to have a second hockey team in that small area, even though Wayne Huizanger has had a heck of a time making one hockey team work.

Mr. TAGLIABUE. Can I comment on that? I think it is one of the most misleading points that has come up all day.

Mr. OXLEY. Yes, I think that is a very good point. I saw Mr. Bettman's eye brows raise as well. Mr. Tagliabue?

Mr. TAGLIABUE. In the market economy, the market acts at a point in time. Under this bill, you make your decisions at a point in time. If there were people in Houston, as there were in Seattle, as has been mentioned already, who were responding to the market, as Paul Allen was, in taking an option to buy the Seahawks in the belief that he could keep it in Seattle, that's the market, but it operates at a point in time.

What this bill does is not the market, because it says for 3 more years, you can change the market conditions, recreate them in a totally different way and then force the business to react as if that was the market. That is not the market. We can react to the market. We have no incentive to move a team if the market is producing either an owner or a stadium. Mr. Modell would not have moved. Mr. Adams would not have moved.

The market is such right now that people are slow to react. People cannot get together. In Houston, this bill would produce the most extraordinary result. The landlord of the Astrodome is a private company, Astrodome U.S.A. It also owns the Astros. The Oilers have been negotiating with a private landlord, which also owns its competitor in town, the baseball team.

Under the Hoke bill, the tenant has to stay while the landlord can leave. The landlord has refused to improve the building. The landlord has refused to renegotiate the Oilers' lease to give them more revenue, but under this bill, because it doesn't apply to baseball, the landlord can leave and go to northern Virginia while the tenant has to stay.

Mr. OXLEY. How is a baseball team competitive with a football team? They are not competitors.

Mr. TAGLIABUE. They are competitive. In Cleveland, the data is perfectly clear, when the Jacobs Field was built, the Cleveland

suite sales dropped by 50 percent, because they went right across the street.

We sell our season tickets at the very time that the baseball season is opening. Anyone who thinks that baseball and football are not competitive, just look at our television ratings during September and October. Look at our attendance in September and October. Look where our fans go when our teams aren't playing there. Do you know where they are going? They go to baseball games. They are going to casino gambling. They are going to all forms of entertainment. The notion that people have no choice when they come to an NFL game is nonsense.

This bill is not a market bill. It is a bill which creates a totally unrealistic market and with an after the fact judgment that now that we have changed the conditions in the market, you have an obligation to go back.

Mr. OXLEY. Let me go to Commissioner Bettman. We have to hear from our friend from Seattle here.

Mr. BETTMAN. I think Mr. Zimbalist has actually brought to my attention and I hope to bring it to yours, of a potential gaping loophole in this bill, using the Miami and Broward County examples.

I believe the bill says that if you have to proceed with forced expansion, you have to grant an expansion team at 85 percent of the price of the last expansion team—100 percent.

Our last expansion was at \$50 million 3 years ago and I dare say, NHL franchises are worth substantially more. If you have a team in Fort Lauderdale or Sunrise, where they are talking about building this building in Broward County, any number of people would step up, demand the franchise in Miami pay \$50 million for it, operate it unsuccessfully for a year and then tell you under the criteria, that they have to move and they are eligible to move, and then they pick up and go somewhere else.

This would in effect open the flood gates for people to be using a market that under the criteria, it is clear the franchise can't make it under, and would have to move and use that to keep moving to other places.

At least in our case, I think this would encourage franchise movement and cause lots of franchises to be granted at bargain basement prices.

Mr. OXLEY. Ms. Hague? I'm sorry to keep you waiting for so long.

Ms. HAGUE. Thank you, Mr. Chair.

As I recall your question, it had to do with our reaction to a public vote to keep a team and/or finance their infrastructure.

Mr. OXLEY. Exactly.

Ms. HAGUE. Versus other mechanisms.

Mr. OXLEY. I know it was a long time ago when that question arose. That is a very good memory.

Ms. HAGUE. To get back on point, sir. It seems to me there are two issues to look at. First of all, if you are going to do a public vote, the ballot measure has got to be very clearly worded so that you understand as a policymaker what the outcome is that you are asking the public to make.

I state as background information, in 1995, last year, for our September ballot issue, we put on a stadium financing package that would have built a new Mariners' baseball stadium as well as

renovated our existing Kingdome. It was narrowly defeated and proponents of the ballot measure proclaimed overwhelming support because it passed in certain areas and they felt sure there was a mandate to build the new baseball stadium but not to renovate the Kingdome. The people who voted against it felt it was a mandate to get rid of professional baseball entirely in Seattle. The outcome was very mixed.

Our State legislature called a special session and came up with an alternate financing package that put together a partnership between the State and the county.

I think in terms of the public vote, that's one mechanism. It's more difficult sometimes to interpret and I would say I'm a bigger fan of keeping local option buyers and working with strong leases.

Mr. ZIMBALIST. Can I just very quickly—

Mr. OXLEY. Yes.

Mr. ZIMBALIST. Since Commissioner Bettman and Commissioner Tagliabue and I almost never agree, I would like to forcefully agree on this point about the pricing mechanism to determine at what price the franchise can be recovered for a city.

What you have there is not workable. It is out of date. There has to be a different mechanism.

I also want to add that one of the reasons why the Browns' suite sales go down is the Browns and the Indians are occupying the same suites in the same ballpark before the Indians moved and Modell was subletting the ballpark to the Indians. That has a lot to do with it, and I agree with your question or the implication of your question, that baseball and football are not effective competitors.

Mr. OXLEY. Mayor, just quickly.

Mr. LANIER. May I respond to some points made about Houston. At least my idea of the facts would reinforce the idea that we are entitled to some kind of an impartial forum in determining these facts.

Deciding to move, it is in the interest of the local market, not true. Adams was offered \$185 million for his ball club by local investors. He just wouldn't take it because he had the \$30 million odd moving money.

Two, the statement was made he was not offered any rehab of the Astrodome. That is simply not true. Greg McLaine repeatedly offered him rehab of the Astrodome. He said he was not interested, he wanted a downtown dome. The third statement was if he came back, he would have to be a tenant of Drayton. I told the league in a meeting where I got to appear in front of all the owners, including Mr. Tagliabue, that the community was able to build an independent facility for the Oilers there on the Astrodome site, if that is what he wanted.

My point is not to get into arguments with Mr. Tagliabue, he wasn't there in Houston when I was. These are conversations I lived.

The idea is in determining whether the league's rules were met, Adams go to testify to the league. I didn't get to hear him. We were excluded. I don't know if this is what he told them or not. That's why it seems to me, when talking about fan rights, and if you want to protect just the working people who are paying this money, they

ought to have some ability at least to go to the same meetings the owners go to at the same time, I mean, and not just hear it much later in a congressional hearing.

Mr. OXLEY. Thank you. Let me turn to our ranking minority member, the gentleman from New York.

Mr. MANTON. Thank you, Mr. Chairman. I would just like to set the record straight on the U.S. Conference of Mayors. I think Mayor Lanier, you were chairing a task force on this very subject, the subject of sports, at the winter meeting.

Mr. LANIER. Yes.

Mr. MANTON. I believe it was you that proposed the resolution which would have required, and I'm quoting, I hope I have it accurately here, "it would require any professional sports league or similar organization to provide a city or community from which a profitable team has been relocated, an expansion team, within a specified period of years, not to exceed 3 years, from the loss of the previous team." Is that fairly accurate?

Mr. LANIER. No, sir.

Mr. MANTON. Did you propose a resolution similar to that?

Mr. LANIER. Let me tell you how that came about. Michael White was my co-chair and Mayor Daley and White and I met ahead of the committee meeting. They had a provision in there, a resolution that White was proposing and Daley and I objected to certain points of it. I think White was going back out and talking to General Counsel for the NFL.

Finally, all three of us agreed to submit the same proposed resolution to the committee. It added judicial review, which had not been there before. At Mayor Daley's insistence, it added the idea that you pick up the taxpayer investment if they break a lease and move, like they are threatening to do with the Bears, to Gary, Indiana.

It contained a provision for public ownership similar to Green Bay, and it contained a franchise provision that you spoke of. That was introduced at the committee meeting. One of the mayors got up and said that he really thought—

Mr. MANTON. The Mayor of Pittsburgh?

Mr. LANIER. I don't remember. One of the mayors got up and said that—the Mayor of Pittsburgh spoke—got up and said that he thought that the franchise provision ought to be that way, that they ought to treat it some other way, and so one of the mayors made a motion to change that to be that if they did transfer out of a city where they are profitable, and our resolution added "where they were profitable," then that city should be offered first refusal on a new team.

That was the resolution that was finally passed and it was passed unanimously.

Mr. MANTON. It did not really include the mandatory expansion?

Mr. LANIER. No, sir; no. It did not.

Mr. MANTON. There seemed to be some confusion about that. I'm glad you were able to clear it up for us.

Mr. LANIER. What I was trying to clear up was that there was a division. There really was not and it wasn't something like I had. We had a committee that met ahead of time. We unanimously rec-

commended something with that in there, but on the floor in discussion, it got changed.

The significant thing to me was the franchise expansion point got treated, and I at least want to keep that on the table, because it is my idea of this artificially low supply as opposed to higher demand, that is what creates the higher price for cities.

Mr. MANTON. Thank you. Commissioner Tagliabue, in your written testimony, you state that "the effect of a forced expansion provision would be to freeze all teams in their current locations in perpetuity." Could you expand on that and tell us why you believe that would be?

Mr. TAGLIABUE. Because I think you could not afford to make a business judgment at a point in time such as we did with respect to Nashville, and then to expose yourself to completely changed conditions in the ensuing months and years and all of a sudden, have an obligation to add a team to your League which is going to dilute the television revenue of all the other teams in the league and so on.

It creates business conditions whereby mandate of Federal law, you expose yourself to business uncertainties for a 3-year period which are intolerable. You would just have to keep the teams where they are and do the best that you could, because expansion is not a net benefit to a sports league. If it was, we would be continuing to sell expansion franchises. It is a very complicated decision to balance how well you are going to do in that local market, how it is going to affect what you do nationally, but we subsidize all of our teams with national television revenue.

The Oilers in Nashville as the Oilers in Houston, get \$40 million through the league annually from television. You are not going to justify that based on the television audience they deliver in Nashville or Houston. It is a subsidy.

Expansion is a decision that you can't take lightly and you can't be forced to expose yourself to 3 years of uncertainty and have to make something that is contrary to the market and contrary to good business judgment.

Mr. MANTON. I see the red light on, and if I could just have one final question and I will throw it out to the whole panel and really ask you to be brief because my time looks like it is up.

Representative Stokes has introduced legislation, H.R. 2699, that allows interested parties to seek judicial review of a sports league decision on relocation. The same bill has been introduced by Ohio Senators DeWine and Glenn.

What are your respective positions on that?

Mr. LANIER. I don't know the whole bill but let me tell you this, on expansion, I would be just as satisfied with the judicial review that would require a replacement team in Houston, provided only we prove they moved them in violation of their own rules. That wouldn't touch Nashville.

My objection is they have these rules—my view of it is, I'm sure they would say otherwise, they don't follow them. They don't even let you really truly participate.

Mr. MANTON. For some kind of independent review, judicial or some other form.

Mr. LANIER. Sure, where the people I represent have some sort of right except taking what the folks tell them when they have upwards of \$200 million of working people's money invested in that facility that they leave. I'm not doing my job if I don't try to at least get them a hearing.

Mr. MANTON. I understand. Mayor Bredeesen?

Mr. BREDESEN. I think Commissioner Tagliabue's point about the timing of this is really critical. I have not read that bill but certainly the notion of any process which is laid out which can be dealt with at a point in time is something which Nashville and Houston and anyone else that is seeking a team can deal with and go through the hoops and cause it to happen.

It is the uncertainty resulting from a decision now and then 3 years of uncertainty on the part of the owners of the teams that really is the thing which causes this to be such an enormous problem.

Any mechanism which allowed for some level of review, judicial review or process, made the decision and then went on with our business in our various cities, I think that would be far superior to what is being proposed.

Mr. MANTON. Mr. Tagliabue?

Mr. TAGLIABUE. I think if there is judicial review, the question is what are we reviewing. The criteria which are in this bill, frankly, were developed by the Senate Commerce Committee in 1984, to make it clear that a league's decision on a team move was not an anti-competitive decision.

I'd rather be subject to the antitrust laws with prompt review within 90 days by way of injunction and declaratory judgment than get under a regulatory scheme here which is beginning to come up with a bunch of standards that frankly are so amorphous, as one of the witnesses said, you don't know what it means.

I would be for court review if it could be done without the risk of punitive treble damages on a prompt time line and in a neutral venue.

Mr. MANTON. Mr. Nepi?

Mr. NEPI. I'm not that familiar with H.R. 2699, in order to make a—

Mr. MANTON. I'm sure there are a lot of things in there but just on the concept of judicial review or independent review.

Mr. NEPI. I really wouldn't want to comment on that right now.

Mr. BETTMAN. As I've said before, H.R. 2740 to us would be a disaster. We would rather have no legislation than have forced expansion. H.R. 2699 without culling each detail, I agree with Commissioner Tagliabue that if we had neutral judicial prompt review with appropriate standards, without the risk of antitrust damage, that would obviously be preferable to H.R. 2740.

Mr. MANTON. Professor?

Mr. ZIMBALIST. If there is going to be judicial review, I agree with the criteria that the Commissioners have just laid out. I think that unless it has been changed again, the version of the Stokes' bill that I last saw talks about a right of first refusal for the city or an individual investor in the city to negotiate a price in order to buy the team from the owner, who would leave.

I think that particular provision is vacuous. It won't work out. It won't protect the city because the owner who is selling the team or being forced to sell the team, if they can negotiate a price, will want to get the price of the franchise in a city that he or she is moving to, which is going to be a city with a brand new stadium. It won't be a market price in the city that is trying to retain it, and that potentially is another problem.

I wanted to add one thing that I think is important for you to consider when you are thinking about blanket legislation affecting all the sports leagues and thinking about questions of expansion. I have great sympathy for a problem that Mr. Tagliabue has in this regard, and that is remember in football, they have a franchise in a town called Green Bay in northern Wisconsin.

The reason they are able to have the franchise in Green Bay is because they have much, much more revenue sharing than the other team sports. I think it is a good thing that they have that revenue sharing. I think it gives them a certain amount of cohesion and competitive balance that the other sports could use.

Because they have Green Bay, it also means they can have a lot of other cities in the United States that have a population of 100,000. The number of potential viable cities in the NFL under existing institutional arrangements is enormous.

I think a bill like this creates a lot more problems for the NFL under present circumstances than it would for the other Leagues.

Mr. MANTON. Finally, Ms. Hague.

Ms. HAGUE. I don't believe that a judicial review should preclude a local government that owns a stadium from enforcing its local contracts and agreements.

Mr. MANTON. Thank you, Mr. Chairman. I yield back the balance of my time.

Mr. OXLEY. The gentleman yields back. The gentleman from Kentucky, Mr. Whitfield.

Mr. WHITFIELD. Thank you, Mr. Chairman. I will make this quick. Ms. Hague, it is my understanding that one of the reasons you all were successful in keeping the Seattle Seahawks is that in the lease agreement on the stadium, you had first right of refusal; is that correct?

Ms. HAGUE. We basically had three elements that I thought were important. One is that we had a full 10 years remaining on the lease. The other that I think you are addressing is a performance clause that requires the team to play in the local stadium and the third had to do with keeping it as a first class facility.

We made upward of \$108 million of improvements in our existing stadium to keep it a first class facility.

Mr. WHITFIELD. In the original negotiations with the team everyone agreed. So, in order to not be in breach of contract, they had to comply with the terms; correct?

Ms. HAGUE. That's correct.

Mr. WHITFIELD. There really wasn't any Federal legislation required on this; correct?

Ms. HAGUE. It was a strong lease.

Mr. WHITFIELD. Other communities could do that as well?

Ms. HAGUE. They could.

Mr. WHITFIELD. Mayor Lanier, Mrs. Jackson-Lee made some comments during her presentation that the taxpayers of Houston had spent hundreds of millions of dollars on this. Is the Astrodome owned by the county or is it a private facility?

Mr. LANIER. It is owned by the county. We built it with county money and paid for it. We spent about \$100 million on the infrastructure around it.

The interesting thing that gave us such an enormous election problem that was discussed a little earlier was this; back in 1987, Adams did this again. He said, you know, unless you fix the Astrodome up with about \$100 million in round numbers, that we are going to hook up in Jacksonville.

They signed a 10-year lease and the public spent its money. At the end of 6 or 7 years, Adams announced he was going to breach the lease, simply pay us the nominal payment that he owed us on the deal and was outraged, you know. When that happened, the team's popularity, when they take the money and then say they have a lease and then say they are not going to stay, anybody that can win an election that way could re-elect, well, somebody who we view we couldn't re-elect.

Mr. WHITFIELD. When you all spent the \$100 million in 1987, were there any provisions in the contract for that 10 years, some sort of penalty clause?

Mr. LANIER. Specific performance was written in there. There was specific performance written in there, they had to play each and every game in the Astrodome. I wasn't there when it was written.

The idea was specific performance was in there and they promised to pay. You go to court and get them to play. They could pay the amount in Nashville on television. That really wasn't true. It didn't bind him.

Mr. WHITFIELD. I'm assuming you all may go to court and force compliance with your contract.

Mr. LANIER. We went through court and we had an elaborate compromise. He sued us in Federal Court under Welfare Mothers' clause, where welfare mothers can leave one State to go to another to get higher welfare benefits. He said we were interfering with his civil rights, you know, that he was sort of a welfare mother. He wanted to restrain us from interfering with him. We said, goodness, I won't interfere with you, it wasn't my lease to start with anyway.

At the same time, you have to stay here 2 years. We signed an agreement that after his lease was up, he could leave. That's the law. In the meantime, he had to stay and live out his lease.

Mr. WHITFIELD. Both parties had access to the court system and took advantage of that.

Mr. LANIER. Let me tell you this. It was a settlement. They went full board trying to breach the lease. It is incredible how creative these fellows can be on breaching a lease. What they claim is some condition of the lease, it doesn't work, and therefore, they are excused from performance.

In Seattle, they said they had earthquakes and they wanted to go to Southern California to avoid them. In Houston, they said,

well, the surface is not sufficient to play a ball game. All of a sudden, they are going to court. They couldn't make it on the surface.

These leases are there but just the risk of losing the lawsuit is not much risk to them, and that's why Mayor Daley, who is faced with the same problem, the Bears wanted to leave and they had a lease for 8 or 10 years, I think, and go play in that metropolis of Gary, Indiana. He wanted a penalty provision in there to create some risk to them.

Mr. WHITFIELD. May I just ask one other question, Mr. Chairman? Mr. Tagliabue, is there any significant difference in the anti-trust managed in baseball and football?

Mr. TAGLIABUE. Absolutely. We don't have any immunity. That is the short answer.

This immunity that has been so broadly announced here under the 1961 television statute is not an immunity in a meaningful sense of the word. What it enables us to do is to sell our television rights as a single business enterprise, just as Disney sells its television programming, just as every other producer of television programming sells its television programming as a single business. We are a league.

There was an earlier court case in the early 1950's which said that the league has to allow each of the teams individually as independent competitors to sell their rights. Congress said, well, we think the league is becoming more national, as television is becoming a reality in American life, which was the fact in the late 1950's and early 1960's, you, too, as a national business should be able to be a national seller.

There is no immunity beyond the ability to pool us, which has been very much in the public interest, as Professor Zimbalist said. It is what enables us to keep a team in Green Bay. It is what enables us to funnel money back to the small market low revenue teams. It is a very, very positive feature of our stability.

To say that the punitive provisions should be passed now because of the 1961 Act is like saying that when you do one thing right, you are entitled to do one thing wrong.

Mr. LANIER. To put a little tighter lid on it, they also okayed the merger of the NFL and AFL. I'll tell you this, if that merger were not approved or was reversed today and one League moved out of Houston, another League would be there the next day.

Mr. WHITFIELD. I yield back my time, Mr. Chairman.

Mr. OXLEY. The gentleman's time has expired. The gentleman from Washington State, Mr. White.

Mr. WHITE. Thank you, Mr. Chairman.

I just have a couple of issues I'd like to explore and maybe we won't keep us all here all afternoon.

Ms. Hague, I'd like to pursue this issue of the leases. In particular in our Seattle situation, it really was the lease that allowed the Seattle and King County area to solve the problem of the Seahawks, or at least to get it in the posture that it is in right now.

I wonder if you could tell us in your view, what was it about the lease that enabled us to keep the team in Seattle or at least for the time being, and whether you felt that additional help was needed that might be considered in this bill.

Was the lease enough or would you have preferred to have some more help?

Ms. HAGUE. We had a very strong lease with our football franchise and it includes a performance clause that requires the team to play in the King Dome.

We have a substantial period of time, half the life remaining on that lease, 10 years, and we have the requirement to keep it as a first class facility and we have made investments of almost \$110 million to keep it such.

I think the unwritten regulation that we've got that we would like to see explored is the ability nationally to keep a first option for a local buyer and I think that that recognizes the investment that government has made and that the private sector has made in the community as well as the fact that the team does have an emotional and quality-of-life factor within that area.

Mr. WHITE. Is that the sort of thing that you think could be negotiated into a lease so that they would have a right of first refusal for a local buyer?

Ms. HAGUE. Yes.

Mr. WHITE. Is that a lease provision?

Ms. HAGUE. Yes, it was built into our Mariners lease and it did prevent Jeff Smulyan from taking the team to Tampa Bay.

Mr. WHITE. I see. That is very interesting.

Is this also the sort of thing that you would support putting in legislation or would it be better to have that as a negotiated item in a lease between the franchise and the city? Do you have a view on that?

Ms. HAGUE. We, in King County, have no problem seeing that as part of Federal legislation.

Mr. WHITE. One other area I wanted to talk about, and Mr. Tagliabue, you are probably the expert on this issue, it does seem to me, just stepping back and getting a little perspective on things, that a professional sports league really is not the sort of business that the antitrust laws were designed to deal with. I mean, after all, the Mariners and the Yankees don't compete against each other in the same way that Ford and General Motors do and is there a broader fix we should have to the antitrust laws than what we are talking about here? Are we really talking about a fish out of water sort of situation by applying these laws at all to sports teams, or is it appropriate just to have a narrow exemption?

Mr. TAGLIABUE. No, I think there is a broader fix because there is a much broader problem. The problem is simply this, whenever something happens in the National Football League or in the National Hockey League that fans don't like the reaction is, what is the league going to do about it. So I naturally react to that and try to propose something that is sensible.

Then, when you proceed on a sensible track and go into Federal antitrust courts, you say, well, the league is really nothing than a trade association and each individual team is entitled to act on its own business judgment. That is the broad problem, the single enterprise problem.

Congress, as I said before, addressed that very thoughtfully and very effectively in the 1961 television statute. It said the league can, as the producer of the league's games and given the fact that

it is a league competition and everyone should benefit from having created that product, the league can sell the television rights and distribute the revenue.

There should be a similar solution in the law. Here, I can tell you, that if Congress passed a simple law which said, for purposes of deciding where its teams will be located a league is a business enterprise, most of these problems will be solved. Because we have every incentive to have options for local owners, we have every incentive for stability in terms of fan loyalty, we have every incentive to remain in the major markets because of television revenue.

What has happened now is that the Federal courts have carved the league up, made the league interests and the league incentives marginal and has elevated the individual team incentives to the point where they dictate or at least are dominant.

Mr. WHITE. Mr. Mayor, you look like you have a comment.

Mr. LANIER. The problem I have with that is, he said just make the league a single entity and that's the end of it. Once again, it comes to Congress, there are no rights spelled out for the fans or the taxpayers or the cities and no ability to contest the situation in the event you feel you have been unfairly treated.

I would say though, earlier, I think this in the NFL's favor, I think they have done a better job of establishing a competitive balance within the NFL than they really have done in baseball. The paradox is that baseball has the blanket relief from the antitrust laws and they have probably done the worst job with respect to competitive balance because they don't have effective revenue sharing, salary cap arguing and union contract, any one of the three.

Mr. WHITE. Yes, sir?

Mr. BREDENSEN. I would like to just add, to try and remind people that many of the issues that are being talked about, to echo what was said earlier here, are issues that in fact can be dealt with in the leases between teams and cities. And in the case of the Oilers and Nashville, there was an extraordinary amount of effort that went into negotiating the lease and closing every conceivable loophole in the lease because people—we looked around and saw the teams occasionally move and wanted to tie it up.

I think what we are going through here is for a long time business was done on a handshake. I mean, the notion of putting \$100-plus million into a stadium and getting back a 10-year lease for it is not something Mayor Lanier is doing but is not something that I would think would be an arm's length, businesslike arrangement. I think what's happening now is people are looking around and saying, yes, these things do leave so let's be a lot more arm's length and a lot more businesslike about the arrangements that we put together.

That is obviously what saved King County and I hope it will be the salvation of Nashville, should that ever occur, and I think increasingly that will happen.

Mr. WHITE. Thank you very much. I see my time has expired, Mr. Chairman.

Mr. OXLEY. The gentleman yields back.

The gentleman from Texas, the vice chairman of the subcommittee.

Mr. FIELDS. Thank you, Mr. Chairman.

Mayor Bredensen, let me just say to you again that I have personally no argument with Nashville, a beautiful city, none at all. I don't see this legislation impacting your particular situation. That is not my intent.

And, as I said, we have no argument with the players and the coaches. I have a real problem with a monopoly which leverages a status at the expense of local taxpayers who are also fans.

I was going to ask Mayor Lanier, what is the average ticket cost for a football fan now?

Mr. LANIER. The ticket cost is about \$40. Let me ask, in the new stadium, what's the cost per seat of the luxury boxes?

Mr. BREDESEN. The cost per seat?

Mr. LANIER. What's the cost to the taxpayer. I heard it cost them \$600.

Mr. BREDESEN. The luxury boxes cost the taxpayer nothing. They are, by our State constitution, paid for out of private funds. I heard that mentioned several times and I am glad to say that.

In the price of the ticket, obviously the boxes go from somewhere below \$50,000 to somewhere over \$100,000 for the boxes. That is a minor part of the seating in the stadium. In fact, we specifically negotiated with the Oilers the requirement to keep a large number of seats out for game week purchase so that specifically it would not be priced out of the range through PSL's or anything else ordinary citizens. Again, something that was done by contract and not by an act of Congress.

Mr. LANIER. My objection is, they then give the local owner all that luxury box income and you've got to pay \$600 to go sit on a seat to watch the game for 2 or 3 hours and this fellow out here making \$200 or \$300 a week, you're putting a tax on his house to pay for it. I mean the league ought not to have that right.

If they do, if they do, the cities ought to have some rights.

Mr. FIELDS. Let me reclaim my time for just a moment because the real oilers, not the football team but the people who work along the Houston Ship Channel where the Mayor grew up, the people who work in the fabricating plants fabricating and manufacturing things for the oil and gas industry, the people who work out in the oil fields, the real oilers, those people, are losing a real interest in the NFL. You are going to lose a lot of fans.

In our particular State, we live, breathe and die for football. I have never been so incensed as I have with this particular situation because when I was in law school, if I remember correctly, I was taught that a monopoly is someone who has market power and actual control.

In listening to Mayor Lanier just a moment ago, when he was talking about his situation and trying to meet the demands of a local owner and work with the NFL, it seemed to me that the Mayor was working with the monopoly. Is that true, Mayor?

Mr. LANIER. Yes, sir.

Mr. FIELDS. Does that upset you, Mayor?

Mr. LANIER. Yes, it does, Congressman, on exactly the basis that you said. We can talk all these technicalities until the world looks level but what's going on out there in the marketplace is the guys like you and I grew up with that work in refineries, that work on the docks, they are leaving this old stadium not for more seats. A

lot of times they go to smaller stadiums. But they are building these fancy luxury boxes, waiters coming in white coats, they build big luxury restaurants, you give them to them. They pay zero rent.

And then that fellow, I'm asked to put a tax on his house that may be worth \$30,000, \$40,000, \$50,000, he's got to pay for it. Now, all this technical stuff we can talk about—that is fundamentally wrong. That is what drives me. That's why I am up here.

You may agree with me that what used to be conspiratorial talk, kids playing soccer and people going to soccer games, people are going to go to soccer games instead of football games and, you know, there is a Federal action to give antitrust immunity.

In my view, that means that we have a legitimate nexus for Federal oversight and action if need be.

Mr. TAGLIABUE. I would like to comment, if I could.

Mr. FIELDS. Sure.

Mr. TAGLIABUE. Because I think that in the past we have talked about some of these issues and I think that what's going on here is not a monopoly at all. What is going on is an escalation of costs which is being driven by a court-ordered free agency, basically. What is going on here is the marketplace becoming increasingly competitive.

One of the indicia of a monopoly is monopoly profits. We don't have monopoly profits. We have teams that can't survive where they are. That is totally antithetical to the notion of monopoly. It is ridiculous to say this is a monopoly.

We have teams, we have a collective bargaining agreement which requires our teams to spend 63 percent of average club revenue on their players. For some of our teams, that is 75 percent of their local revenue. They can't survive. That's what is going on here.

We have labor costs forced by free agency on us. We have privatization of facilities forced on us by the current environment which I think is healthy. We are trying to privatize the cost of constructing our facilities.

We are in a business where we just got our players to agree to exclude \$100 million a year from sharing with the players so that player share will go into the cost of building facilities. This isn't a monopoly, it is a competition which is pushing teams to the point they can surprise.

Mr. LANIER. Let me—

Mr. FIELDS. Before the Mayor does, my time has expired. But let me just say I wasn't privy to the private conversations and negotiations but as someone who reads the local newspaper, who is an avid football fan, who played football, it appears to me that you have a monopoly extorting from the city, the city ultimately having to go to the fan who supports a franchise for more money.

Something is out of kilter, dramatically out of kilter, and I want the Mayor to tell me if I am wrong.

Also, one other thing, I would love to invite you and I am sure the Mayor would provide the forum, for you to go make that argument on the Houston ship channel or within one of those fabricating plants on why the fan is having to pay as much as they are and why we are now being disenfranchised.

Mr. LANIER. And when they fill them up every day for 9 years.

Mr. FIELDS. Would you accept the invitation to come to Houston and talk to the average fan?

Mr. TAGLIABUE. I would be glad to. I have done it on——

Mr. FIELDS. Mayor, will you provide the forum?

Mr. LANIER. You bet you, in the morning.

Mr. FIELDS. I want to know, are you serious about coming to Houston and talking with the fans, average fans?

Mr. TAGLIABUE. Yes.

Mr. FIELDS. Mayor, are you serious about——

Mr. LANIER. Absolutely. Absolutely, this evening.

Mr. NEPI. That comment on whether fans understand players salaries, if I can——

Mr. OXLEY. The gentleman from Cleveland, proceed.

Mr. NEPI. I am not from Cleveland. I am from a little town, Brandenburg, Kentucky.

About players' salaries, I heard that Mr. Tagliabue mention that Jacobs Field ran Art Modell out of town because it priced him out of the business. If I am not mistaken, he had the second largest viewing audience in the NFL, even with a 3 and 13 season, they sold out that stadium.

Now, mismanagement is why Mr. Modell lost money. It wasn't because he had fan support. He had the largest fan organization in the United States, 209 clubs representing over 100,000 fans throughout the United States and nine foreign countries supported the Cleveland Browns.

He didn't lose money because he didn't have fan or community support. I don't know what he did with his money but the fans were there.

I would like to make another statement on behalf of the fans for these PSL's. There was a comment made that the communities aren't paying for them. Somebody is building that stadium and it is coming out of our pocket.

Now, we are not the ones that are able to go and purchase a ticket to sit there. But it is our tax dollars, our appropriated dollars that are going into building that facility for that industry.

What does the PSL cost? The normal fan cannot afford \$2,500 to just have the right to then go purchase a ticket for \$400 or \$500.

Mr. OXLEY. Just a quick response from the Mayor and then we will close.

Mr. LANIER. The idea that monopolies don't lose money is nonsense. Ask any electric utility about a nuclear plant and the remedy they had was they went busted.

Now then, these folks negotiated a bad union contract. I agree with that. But they oughtn't be allowed to pass that cost on to taxpayers.

And how you find out it is a monopoly is look at the difference in this league, go no further than before the merger of the AFL and the NFL which created the monopoly, which Congress approved, then after and ask yourself what would happen if those two separate leagues existed today. They would be playing the Superbowl but two separate economic entities, whether Houston, New York City and Los Angeles today where the market would demand and control it. They would go in there and there would be no greater

motivation than American motivation to make a profit outside monopoly lines.

Mr. OXLEY. We will let that be the last word, Mayor.

Let me thank all of those on the panel for your testimony. A most interesting hearing, a most informative hearing for the members. I know a lot of you came a long distance and we most appreciate it. This subcommittee is now adjourned.

[Whereupon, at 3:38 p.m., the hearing was adjourned.]

[The following statement was received for the record:]

PREPARED STATEMENT OF DAVID STERN, COMMISSIONER, NATIONAL BASKETBALL ASSOCIATION

We very much appreciate this opportunity to express the views of the National Basketball Association with respect to the proper application of the antitrust laws to the internal business decisions of a professional sports league and, more particularly, to express the NBA's opposition to the forced expansion provision of H.R. 2740, the "Fan Freedom and Community Protection Act of 1996."

THE NATURE, STRUCTURE, AND OPERATION OF THE NBA

The NBA is an integrated business enterprise that engages in the production and marketing of an indivisible entertainment product: NBA Basketball. The NBA is organized as a joint venture, with each of its 29 members operating a professional basketball team in a particular geographic location in North America. (A list of these teams and their home cities is attached to this statement.) Upon entering the NBA, each new member makes a contractual and fiduciary commitment to be bound by the League's governing principles and documents, including its Constitution and By-Laws.

The NBA Constitution and By-Laws confers authority upon the League as a whole (as opposed to any individual member) for every business decision concerning NBA Basketball. This authority is exercised by the League's board of directors (called the NBA Board of Governors), which is comprised of one representative from each member team, and by its chief executive officer (the Commissioner). The League has established and enforces a wide-ranging set of rules governing virtually every aspect of the production and marketing of NBA Basketball. Unless a team has received the requisite NBA approvals, it cannot, for example, enter into a player contract, play a game, transfer even one percent of the ownership of its team, relocate its playing site, utilize League or team trademarks or logos for promotion, advertisements, or otherwise, or enter into any television or radio contract. The League determines which sources of revenue will be shared equally, and which shall be retained by the teams, and may increase or decrease these allocations at any time by a vote of the Board of Governors. The League, through the Commissioner's office, has full, complete, and final jurisdiction to resolve any dispute between two or more of its members.

In keeping with its governing structure, the economic activities of the League and its members are integrated and interdependent. At its most basic level, this interdependence is obvious: it takes two NBA teams to play a game and the game only has meaning with the overall competitive structure of the League. But the integration of the business efforts of all League members goes well beyond that. The League conducts all national and international marketing of NBA Basketball, and the revenues generated by its efforts are divided equally among all teams. In addition to this critical financial support, the NBA also makes available to the individual teams substantial League-wide assets (such as NBA logos and trademarks), technical direction and support (for example, with respect to television production and game presentation), and goodwill to assist teams in their local marketing efforts. In short, no individual team can or does produce NBA Basketball on its own; the creation of that product requires the collective efforts and joint action of all League members.

Taken together, the integrated efforts of the NBA venturers have enabled the League to compete more effectively against other forms of entertainment and to grow the business of NBA Basketball. To take just one measure of that growth, the NBA has expanded at regular intervals since its inception as an 11-team league in 1946. Six new teams were created during the 1960s; eight were added during the 1970s; five were added during the 1980s; and, in May 1995, two new teams were created in Toronto and Vancouver. As a result, NBA fans both domestically and

abroad have enjoyed an ever-increasing number of NBA teams, players, games, telecasts, events, and products—that is, more NBA Basketball.

FRANCHISE RELOCATION AND ANTITRUST

Legislative proposals like H.R. 2740 proceed from the premise that professional sports leagues need a Congressional "exemption" from the antitrust laws in order to make basic business decisions concerning where or on what terms they will operate. We believe that premise to be unfounded. As discussed above, the member teams of the NBA, for example, are not independent economic competitors warranting scrutiny under the Sherman Act's "conspiracy" principles; to the contrary, they are co-venturers in a single business enterprise producing a unified entertainment product that competes with numerous other entertainment products in the United States and around the world. Because the economic structure of the NBA should not trigger application of the statutory prohibition against "unreasonable restraint of trade," an antitrust "exemption" of the kind contemplated by H.R. 2740 should not be necessary.

Some federal courts have wrongly concluded that individual teams are independent sources of economic power and therefore that particular business decisions of professional sports leagues are subject to attack under the antitrust laws. But even under this misapplication of antitrust principles, we are confident that the NBA could ultimately defend its procedures and determinations in the area of franchise relocation as legitimate business practices that do not unreasonably restrain trade. To ensure such a result, the NBA has for many years adhered to a set of objective criteria similar to those contained in H.R. 2740 as the sole basis for its decisions regarding the location of its teams. (These criteria are attached to this statement.) For this reason as well, the NBA should have no need for an antitrust "exemption" from Congress in order to control franchise movement.

We recognize that the defense of antitrust attacks on the League's franchise relocation decisions is enormously costly, burdensome, and time consuming, and that the outcome of any particular lawsuit cannot be predicted with certainty—especially if such a suit is tried before a "home town" jury. A statutory antitrust "exemption" for franchise relocation decisions would therefore have the obvious benefit of eliminating these substantial costs and business risks. In our view, however, an exemption of this kind should not only be unnecessary (for the reasons discussed above), but it would also be far too narrow. If one accepts the erroneous theory that the NBA is nothing more than a collection of traditional economic competitors, then no League decision is safe from antitrust attack or from the costs and burden that a league has to incur in defending against it. Thus, while the NBA does not oppose the antitrust exemption for franchise relocation decisions provided by H.R. 2740 and other similar legislation, we believe that the more sensible approach is a broader bill confirming that none of the NBA's business decisions can be challenged as Section 1 "conspiracies."

THE FORCED EXPANSION PROVISION OF H.R. 2740

H.R. 2740 confirms the NBA's worst fears about antitrust legislation addressed only to the franchise relocation issue. Although the Bill correctly confirms that the antitrust laws have no application to the decisions of a professional sports league concerning the location of its teams, it does so at an unwarranted and unacceptable cost: an ill-conceived provision that would require a league to expand to a city from which one of its teams has moved. This extraordinary governmental intervention into internal league affairs is not only fundamentally unfair (and surely unconstitutional), but it also makes no sense.

By establishing a set of objective criteria that a league is obliged to consider in considering franchise moves, H.R. 2740 clearly recognized that there are economic circumstances under which a team move can be justified. But even where such circumstances exist—for example, where the league has determined that a particular city is no longer willing or able to support an NBA team—the Bill would still direct the league to provide an expansion franchise to any "financially able" investor in the prior city who expresses an interest in owning a team. No legitimate interest can be served by requiring a league to expand to a market that it was justified in leaving in the first place.

The forced expansion provision of H.R. 2740 also represents an unprecedented intrusion into the affairs of a private business. For the NBA, like any other business, the decision to enter or leave a particular market depends on a variety of factors and considerations uniquely combined with the expertise of responsible league officials. If the NBA is forced to keep teams in unprofitable markets, expansion or relocation into new and more appropriate markets will become much more difficult.

Rather than making franchise location decisions based on sound business principles, the NBA will instead be constrained by impractical federal regulations. There is no basis for government involvement in what should be an internal league decision.

The NBA strongly opposes the forced expansion provision of H.R. 2740. In our view, it would clearly be preferable for Congress to take no action whatsoever with respect to the franchise relocation issue than to enact this Bill.

Member Clubs of the NBA

Club	Home City
Atlanta Hawks	Atlanta, Georgia
Boston Celtics	Boston, Massachusetts
Charlotte Hornets	Charlotte, North Carolina
Chicago Bulls	Chicago, Illinois
Cleveland Cavaliers	Cleveland, Ohio
Dallas Mavericks	Dallas, Texas
Denver Nuggets	Denver, Colorado
Detroit Pistons	Auburn Hills, Michigan
Golden State Warriors	Oakland, California
Houston Rockets	Houston, Texas
Indiana Pacers	Indianapolis, Indiana
Los Angeles Clippers	Los Angeles, California
Los Angeles Lakers	Los Angeles, California
Miami Heat	Miami, Florida
Milwaukee Bucks	Milwaukee, Wisconsin
Minnesota Timberwolves	Minneapolis, Minnesota
New Jersey Nets	East Rutherford, New Jersey
New York Knicks	New York, New York
Orlando Magic	Orlando, Florida
Philadelphia 76ers	Philadelphia, Pennsylvania
Phoenix Suns	Phoenix, Arizona
Portland Trail Blazers	Portland, Oregon
Sacramento Kings	Sacramento, California
San Antonio Spurs	San Antonio, Texas
Seattle SuperSonics	Seattle, Washington
Toronto Raptors	Toronto, Ontario
Utah Jazz	Salt Lake City, Utah
Vancouver Grizzlies	Vancouver, British Columbia
Washington Bullets	Landover, Maryland

CONSTITUTION AND BY-LAWS OF THE NATIONAL BASKETBALL ASSOCIATION

As in Effect on January 1, 1994

FRANCHISE RELOCATION

9A. A Member may transfer its franchise, city of operation, or playing site of any or all of its home games, to a different location, within or outside its existing Territory, as defined in Article 10, only in accordance with and subject to the following provisions:

(a) Application to relocate must be made in writing to the Commissioner. The application shall identify the proposed new location and the arena in which the Member proposes to play its home games, and shall be accompanied by a certified check in the sum of \$50,000 to defray the costs of the investigation of the application. Following the disposition of any application the Association shall repay to the applicant the sum of \$50,000, less all expenses reasonably incurred in connection with the investigation of the application.

(b) No application to relocate may be made after the first day of March preceding the season in which the proposed relocation is to take effect. Within ten (10) days of the receipt of an application to relocate, the Commissioner shall refer the application to a Committee to investigate the application. The Committee shall be appointed by the Commissioner and shall consist of no fewer than five (5) Governors or Alternate Governors. Within one hundred twenty (120) days from the Commissioner's receipt of the application, the Committee shall report to the Board of Governors with respect to the results of its investigation and its recommendation of whether the application should be granted or denied. The recommendation of the Committee shall be based solely and exclusively upon the following factors:

(i) Whether the proposed new location can support a franchise in the Association or, if the proposed new location is within the existing Territory of a Member, whether the proposed new location can support another franchise. In evaluating this factor, the Committee shall consider: existing and projected population, income levels and age distribution; existing and projected markets for radio, broadcast television, cable television, and other forms of audio-visual transmission of Association games; the size, quality and location of the arena in which the Member proposes to play its home games; and the presence, history and popularity in the proposed new location of other professional sports teams and major college basketball teams.

(ii) Whether the applicant has demonstrated that it will be able successfully to operate an Association team in the proposed new location. In evaluating this factor, the Committee shall consider the applicant's present and projected financial condition and resources and its past performance in operating a team in the Association.

(iii) Whether the proposed relocation is likely to have an adverse effect upon the Association's ability to market and promote Association basketball on a nationwide basis in a diverse group of geographic markets.

(iv) Whether the proposed new location presents particular disadvantages for the operation of the Association, such as by creating significant traveling or scheduling difficulties or because of adverse state or local laws or regulations.

(v) Whether other Association Members, in addition to the applicant, are interested in transferring their franchises to the proposed new location, or whether there are persons or entities interested in obtaining an expansion franchise in the proposed new location. In any such event:

(A) Except as otherwise provided herein, all applicants shall follow the procedures set forth in Article 6 or this Article, as the case may be. All additional applications to establish an NBA team in the proposed new location for the season to which the initial application relates shall be made within forty-five (45) days of the Commissioner's receipt of the initial application referred to in subparagraph (a), and the one hundred twenty (120) day period provided for in subparagraph (b) of this Article shall be extended to no longer than forty-five (45) days after the Commissioner's receipt of the initial application.

(B) The Committee appointed pursuant to this Article shall investigate each of the applications and shall recommend which of the applications, if any, should be granted. In reaching its recommendation, the Committee shall consider all factors listed in subparagraph (b)(i-iv) of this Article and shall also consider:

(i) which applicant is likely to operate most successfully in the proposed new location, or otherwise best serve the interests of the Association; and

(ii) in the case of a proposed expansion franchise, whether the interests of the Association would best be served by expanding the number of Members in the Association.

(c) The Committee is empowered to require from the applicant, and applicant shall furnish, such information as the Committee deems appropriate for the conduct of its investigation. The Committee may engage consultants or other experts to assist it in the investigation of the application and may also request such additional information from the Commissioner as the Committee may deem appropriate for the conduct of its investigation. All information supplied to the Committee pursuant to this subparagraph (c) shall be made available to the applicant, and the applicant shall be afforded an opportunity to appear before the Committee to present whatever additional information or arguments the applicant desires. Any other Governor or his representative may also appear before the Committee to present whatever information or arguments such Governor desires.

(d) The report and recommendation of the Committee shall be delivered to each Member of the Board of Governors. The Commissioner shall call a meeting of the Board of Governors to consider the Committee's report and recommendation, which meeting shall be held no sooner than seven (7) days and no later than thirty (30) days of delivery of the Committee's report and recommendation. The applicant shall be afforded an opportunity to appear before the Board of Governors to present whatever information or arguments the applicant desires. The question whether to approve the proposed relocation shall be decided by a majority vote of all of the Members, and no vote by proxy shall be permitted. The vote of each Governor on the proposed relocation shall be based solely and exclusively upon the factors listed in subparagraph (b)(i-v) of this Article.

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